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THE FAILURE OF FEDERALISM IN AUSTRALIA

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BY

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Vere scire est per causas scire

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PREFACE

DURING the Victorian era a school of political thought which has always shown itself ready to draw its inspiration from foreign sources fell under the spell of federalism as exemplified in the outstanding instances of Switzerland and the United States of America, and men of note in the world of letters who were affiliated to that school were so diligent in upholding the merits of federalism as to produce an impression in certain intellectual circles that a federal constitutional system was not only desirable for its own sake, but also, where the area to be governed was large, virtually indispensable.

Towards the close of the same era the movement towards a union of the British colonies in Australia began to be well under way; and those who took the lead in that movement were satisfied that the above eminent writers had reason on their side and that their speculative estimate of the practical value of federalism could safely be relied on. As matters then stood, the Parliaments of the Australian colonies were the main potential centres of resistance to the movement towards union, forasmuch as if it succeeded they must of necessity be shorn of some of their powers and prestige. But a strictly federal form of union would bring its own compensation with it, because, though the Parliaments would have to part with some of their powers to the Federal Parliament that was to be, they would be guaranteed in the sure possession of all that were left. It was thus obvious to the leaders of the movement towards union that to aim at a strictly federal form of union was to follow the line of least resistance and to take the shortest cut to their goal. They did so, and when Federation Enabling Acts had been secured from the Parliaments, the final step—the inauguration of a strictly federal form of union—was taken within the next few years. So shrewd a judge of men and affairs as His late Majesty King Edward VII thought, as is now known on the authority of Sir Sidney Lee, that in Australia Federation was carried too soon. At any rate it was carried without much consideration having been given to the question whether after union a strictly federal form of polity would meet the legitimate needs of the Australian nation as fully as a unitary one might do. Time, however, tries everything, and the course of events in Australia since Federation has been such as to raise a strong doubt whether due weight had been given to all the factors to be considered when the above speculative estimate of the practical value of federalism was acted on as stated. It is self-evident, indeed, that the ends of government cannot be perfectly attained, unless, in addition to the right sort of institutional machinery, there is also a regular supply of the right sort of motive power; and for one thing experience in Australia has proved that under its strictly federal form of polity the right sort of motive power is generally in short supply. The field of government cannot be divided up as it now is into distinct spheres of action without entailing a corresponding dividing-up of the field of vision. No body of public opinion finding vent within the limits of a State brings into focus together all the circumstances which in reason ought to be taken into account before its decisions become fixed, and the public opinion, which concerns itself about Federal matters, suffers from a similar incapacity to see all things in their true relations. For that and other reasons much of the total amount of legislative and administrative action taken in Australia exhibits loss of touch with realities—a loss of touch which not unnaturally strikes judicious observers visiting Australia more strongly than it does Australians themselves. The late Lord Northcliffe in his farewell message to Australia said: 'I have met scarcely a score of men and women in Australia with any sense of the imminent danger in which this country stands.' And this remark furnishes the key to many vagaries in the schemes of policy usually pursued. The recent British Economic Mission to Australia in its report (published after the following chapters had been completed in all but their final form) has shown how far the financial and economic practice of the country falls short of what from the point of view of pure economics it ought to be. On the face of things in Australia, then, there is evidence enough of the chronic shortage of the motive power necessary to make the whole apparatus of governmental mechanism so work as to enable the Australian nation to adapt itself and its way of living to the circumstances amidst which its lot is cast. And yet during the Great War, as may be remembered, large bodies of Australians, who, so far as their mental faculties were concerned, were a fair sample of the Australian people in bulk, showed that they were not lacking in the art of adapting themselves to their surroundings. It would therefore be a far-fetched explanation of what is now amiss in Australia to put it all down to deficiencies in the Australian people. A much more probable explanation is that it is due in part, if not wholly, to the Australian nation's having to live under a form of polity which does not suit it or its heredity. Hence the question which was thrust aside during the course of the movement towards union still obstinately raises itself—the question, that is to say, whether the Australian nation would not be better off under a unitary than under its present federal form of polity. This book is accordingly written to show that that question can only be answered in a rational way if the materials for instituting a comparison between the two forms of polity are complete, not the least important amongst those materials being the sets of conditions which the two forms of polity bring into existence. Those conditions are invisible on the surface of things, but their presence can be made clear by a process of deductive reasoning. Between the two sets of conditions there are found to be differences going either to the mechanical efficiency of governmental operations or to the psychological environment amidst which individuals think, feel, and act in the two respective cases. The working of neither form of polity, indeed, can be thoroughly understood unless due regard be had to the set of conditions under which it works. For that reason the results of the inquiry made in this book into the natures of and differences between these distinctive conditions may have some value in countries other than Australia. Hence the publication of this book in London.

One thing remains to be added. The historical facts marshalled in the Fifth Chapter in support of the generalizations contained in it have been drawn from a variety of sources besides those expressly quoted. But the number of those facts provided by the *History of England* by G. M. Trevelyan, *The Constitutional History of England* by F. W. Maitland, and *The Making of the English Constitution* by A. B. White has in each case been sufficiently large to make it right for the author to single those standard works out for particular mention and to acknowledge his indebtedness in the above respect to them.

A. P. C.

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CHAPTER I

THE BROAD ASPECTS OF FEDERALISM IN AUSTRALIA

WHEN, towards the close of the nineteenth century, the logic of events had so far worked upon the populations of the six British colonies in Australia as to create the will to unite, there were no serious regional distinctions to complicate the task of devising such a form of union as one and all could accept. There was no language difficulty because English was the mother tongue of nearly everybody. There was no race difficulty because the great majority of the people were of British extraction; and the proportions in which the various British racial stocks were represented were for all practical purposes uniform throughout. If the people of Australia as a whole were not of the same race they could at least have been accurately described as being of the same blend of races. Moreover, the common law of England was the common law of all Australia; and the same system of Parliamentary (or as it is called in Australia Responsible) Government was everywhere at work. The past operations of that system had no doubt caused each of the colonies to pursue its own course in matters of policy. But the variances did not go deep or far. The most important of them was over the fiscal issue; and in that matter all the colonies were generally agreed that the Federal Parliament, charged with the common weal, should act as the final arbiter. In Australia, then, when the hour for union struck there were the makings of a singularly homogeneous nation. The respective colonies were less differentiated from one another than are certain of the counties of England, although those counties have most of them a common history under a unified form of government for wellnigh a thousand years. Indeed, as compared with the divergencies between England, Wales, and Scotland—all now joined together under a unitary form of polity—

the distinctions between the respective British colonies in Australia were in verity microscopic.

The scheme of Australian Union, as devised in Australia and given legal effect by the Commonwealth of Australia Constitution Act of 1900—a statute of the Imperial Parliament—took a form which was federal in the strictest sense of the term; and the Australian nation when it thus made its entry upon the stage of world affairs presented, as it still does, a well-marked example of a homogeneous nation constituted upon the federal principle of social organization. This resort to federalism for the purpose of organizing the nation was a complete departure from the best British precedents. When, for instance, following the Norman Conquest, the realm of England was moulded into something like its present shape, the principle of social organization, applied with logical thoroughness, was the unitary principle, that is to say, the principle by which a country is governed from a single source of rightful authority—the very opposite of the federal principle. So, also, when in the reign of the first of the Tudors Wales was brought into union with England, the same unitary principle was carried forward and adopted as the principle upon which society within the new composite body politic was to be organized. The process was repeated once more in the reign of Queen Anne, when Scotland of its own free choice came into union with England and Wales. In the Great Britain which thenceforward was to form a single body politic all rightful authority in matters of government was, as the articles of union prescribed, to flow from one source only. Since then a process of constitutional evolution whose course will be traced out in a subsequent chapter rendered that source complex instead of being as simple as it originally was. But the very intricacy of the relations now prevailing between the British Monarchy and the present depositaries of its governmental powers is proof that successive generations were all agreed upon the necessity of keeping the principle in full force and effect. It is not too much to say that the unitary principle of social organization served for a cycle of many centuries as the tutelary principle of the English people, or that the English (now British) Constitution grew out of it, or that the British Empire was at first founded upon it. British precedents were therefore against federal unions. Nor could the strictly federal form of union adopted in Australia derive much support from such well-known constitutional systems as those of Switzerland and Canada. In the case of Switzerland there were regional distinctions. Some of the Cantons were French, some Italian, and some German, in language, race, and mentality. Each racial element in the total population was jealous for its own manners and customs and felt in regard to the other two racial elements that their ways were not its ways. The institutional machinery of a Canton provided the race therein predominant with means of enforcing respect for its susceptibilities; and it therefore suited each race that the Cantons generally should have the widest legislative and administrative competency possible under the circumstances. There had to be union in some form; otherwise the country could not maintain its independence against neighbouring powers. But if the authority of the Central Government were left unlimited each racial element would have been liable in its turn to have the other two racial elements so wielding that authority as to meddle in matters with which they had nothing properly to do. As the case stood the only method of meeting the needs of the situation was to organize the country upon the federal principle of social organization. The federal form of union which was gradually extended over the whole country was the direct outcome of the want of homogeneity in the population. It remains to be seen whether (just as at the time of the French Revolution the social fabric—resting, it is true, upon a narrower basis than now—failed to stand the strain then imposed upon it) the Swiss scheme, well devised as it was for certain purposes, may some day collapse through pressure exerted by a steadily rising spirit of nationality in Italy and Germany.

In the case of Canada the adoption of a federal form of union—less absolutely and unequivocally federal, indeed, than the Swiss—was due to a similar cause. One of the Provinces—Quebec—was differentiated from the rest in race, language, and in some respects religion. That Province had originally been settled from France whilst the other Provinces had in the main been settled from the British Isles, and its inhabitants used French as their mother tongue and adhered in a solid mass to the Roman Catholic Church. The other Provinces spoke English and within each of them there was a diversity of religions. People in the Province of Quebec had their minds made up that no constituted authority whatsoever should have any say in those subject-matters of internal governmental action (as, for example, public instruction) which bore or might bear upon their racial self-consciousness or upon the interests of their religion, unless that constituted authority were responsible to themselves alone. Hence it was impracticable to organize Canada as a whole upon the principle that all rightful authority in matters of government should have one source. If that had been done constituted authorities representing the whole of the Provinces together would in the last resort have had control of the educational system in each of the Provinces, Quebec included; and that was precisely what people in Quebec would not have. The only plan of union which that Province was prepared to accept was one which distributed the various subject-matters of governmental action between a Central Government and a number of independent Provincial Governments, so that the Provinces should have exclusive jurisdiction over a limited number of subject-matters, including amongst others that of public instruction. Agreement upon this plan of union involved the adoption for Canada as a whole of the federal principle of social organization. As in Switzerland, so in Canada, a want of homogeneity in the population compelled resort to a federal form of union. Even in the case of the United States there was a regional distinction which would have been quite sufficient of itself to account for the federal nature of the Union. The whole social and economic life of the Southern States rested upon the institution of negro slavery. In the Northern States the institution was detested. Matters standing so, it was not to be expected that the Southern States could ever agree to the creation of a Central Government with jurisdiction over all subject-matters of governmental activity, because their so-called domestic institution of slavery would at once have been placed in jeopardy. To induce the Southern States to come into the Union it was necessary amongst other things to cut down the powers of the Central Government so that its sphere of action should be confined to a number of specified subject-matters amongst which slavery should not be included. Moreover, the determination of the Southern States to safeguard the slave-holding interest as far as possible is shown by particular clauses in the Constitution as originally framed. The effect of one clause was to suspend for twenty years the power of Congress to legislate against the importation of slaves; the effect of the other was to provide for the surrender of fugitive slaves escaping from one State into another. In neither clause were the words 'slave' or 'slavery' used; and the circumlocution adopted to attain the objects in view heightens the significance of both clauses. Notwithstanding the federal form of the Union and all other precautions taken by the Southern States, the force of circumstances proved in the end too strong against slavery; and the thirteenth amendment of the Constitution, as is well known, prohibited slavery straight-out. Besides the vehement particularism of the Southern States there were no doubt other forces working against unification. People in the thirteen bodies politic, which had recently become both in fact and in law sovereign and independent States, were living in a psychological environment which was somewhat abnormal. The violence of the rupture with Great Britain had for the time being dulled racial feeling, and there was a consequent tendency to disparage the importance of a common moral patrimony as a basis and bond of union. Whilst all thirteen colonies were members of the British Empire they were in a sense members one of another. But when they were no longer fellow-members of that Empire there was between them no other tie apart from material interests, which in the then state of men's minds was of much account. Hence it was easy for the public of each of the thirteen States to think in terms of its own State, and difficult for it to think in terms of all thirteen States together. The conception of an American nation made up of the people of all the States had therefore at that stage little or none of the force necessary to ensure its own adoption as a basis of union. Indeed it was only after the French Revolution had like a thunderstorm cleared the air in Europe that the solid worth and practical value of the principle of nationalities became plainly visible to the mental vision of the whole civilized world. Another factor in the psychological environment was the popularity of certain abstract doctrines as to the natures of man and of government respectively—doctrines which had blown across the Atlantic from the continent of Europe, where the feudal organization of society was wearing out and the ancient Monarchy of France was tottering to its fall. In consequence, contemporary thought was badly affected and men were giving to the crude views of this or that idealist a more attentive hearing than they deserved. But it is unnecessary to enlarge upon the effect of these speculative theories upon the minds of men in America, because enough has already been said to show that in view of the presence of two amongst other conditions—the existence of slavery and the weakness of the sense of nationality—the Union of the American States could not at first have been anything else than strictly federal. It is no doubt true that upon the abolition of slavery one of those conditions ceased to operate, and that nevertheless the Union still continued to retain its original form. Two generations had been born and bred under the then established constitutional system of the United States; and the introduction of that new factor sufficiently explains why the disappearance of the regional distinction in regard to slavery was not followed by a change in the form of union. Whether if that regional distinction had not operated in the first instance the form of union would have been federal is a matter upon which it would obviously be idle to speculate. Hence it is by no means certain that the instance of the United States afforded a precedent covering the case of the federal Union as formed in Australia. The Swiss and Canadian precedents clearly did not apply; and British precedents were dead against the Australian Union's being federal at all.

When all six colonies of Australia voted by a majority in each of them in favour of the draft Bill which with little variation in its text eventually became the Commonwealth of Australia Constitution Act, they were not allowed any opportunity of choosing between a strictly federal form of union and a union which followed British precedents. The only choice seemingly left open to them was between the Bill as drafted on the one side and doing without union on the other. The majority-vote in favour of the draft Bill was influenced by two facts. (No one can say exactly to what extent, but there is good reason to believe that the extent was at least appreciable.) Strident cries of 'Now or Never' and of 'This or None' were set up as by a well-drilled chorus and sent ringing from one end of Australia to the other. Moreover, the draft Bill wound up with a clause which might tend to quieten the misgivings of those who resented the departure from British precedents. That clause gave ample power to alter the Constitution of the Commonwealth and established a definite and—as it then seemed—workable procedure for doing so. That clause if interpreted, as it ought to be, according to the proper canons of legal construction is wide enough in its scope to authorize a change in the basal principle of social organization, and to legitimate in advance the substitution of a unitary for the present federal form of polity in Australia.[1] The acceptance under such circumstances of the draft Bill for the Constitution of the Commonwealth of Australia cannot be interpreted as meaning that the majority in all six colonies deliberately registered a preference for union upon American as against union upon British lines. The real significance of the results of the referendum was that, rather than have no union at all, people were prepared to accept a union on American lines in the first instance but with an option of getting it changed into a union upon British lines if a majority of voters in all the States should see fit. It is only to the above extent, then, that the Australian nation stands committed to federalism. There is a right of option to get rid of it. Ought that option to be exercised? That question can only be answered after the comparative merits of a unitary and a federal form of constitution for the Australian nation have been explored; and some mental effort is required in order to master the ins and outs of so complex a matter.

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[1] In the Appendix, page 211, will be found a considered legal opinion upon this point.

Some may perhaps say that there is no need for people in Australia to give time and thought to an inquiry of the exacting nature suggested. The United States may seem to them to have fared well enough under its present federal form of polity, and why, they may ask, should not Australia do the same? But the circumstances of the two cases decisively distinguish them. Whilst the United States was growing up the means of communication and transport between one continent and another were in a comparatively rudimentary state. Even the steamship was in its infancy. Nowadays the factor of distance has in large measure ceased to count. Submarine cables, wireless telegraphy, aerial navigation, motor transport, and improved steamships, have brought the peoples of the world into potentially close contact with one another, so much so that the Northern parts of Australia must be regarded as virtually Asiatic Marches. Moreover, the settled policy of the United States was for long to keep the door wide open to indiscriminate immigration and to refuse admission to nobody—with the result that of its total population at least one-third is not now of British descent. Whilst this policy lasted no one outside could murmur or inveigh on that score against the United States. In Australia, on the other hand, the settled purpose of the country is to maintain racial purity at all costs, and the White Australia policy, being a perpetual provocation to the peoples of Asia, can only be maintained so long as sufficient man-power and money-power are available to keep the door barred and bolted. There is a third point of difference between the two cases which is perhaps the most important of all. During the critical period in the development of the United States, the people of Asia slumbered and slept. Now contact with Western civilization has wakened them. Japan has moved on until it ranks amongst the Great Powers; it is behind none of them in quickness to resent any real or fancied injury. A change is creeping over China, and she now chafes at and reacts to various pressures from outside. Forces of an obstinate nature are working within her, and if the action of those forces should result in her having stable and efficient government then indeed it would be time for many other peoples to look to themselves. Napoleon foresaw the danger which China's enormous weight of numbers might eventually present to the rest of the world; and the very virtues and sterling qualities with which the Chinaman is to be credited would but increase the danger. In like manner many in India are growing restive under British tutelage and imagine that they would be better off if they were only left to themselves. Three Asiatic populations of huge bulk (not to speak of others) are thus assuming towards the white races an attitude quite different from that which was usual and normal up to half a century ago; and the lengthening shadow cast by the new Asia as it uplifts itself falls right over the whole continent of Australia.

If one thing be taken with another it is perfectly clear that there is little or no resemblance between the respective sets of circumstances under which the United States passed and Australia is passing through the earlier stages of growth; and there is no valid reason for holding that because the United States as organized under its strictly federal form of polity passed safely through those stages a similar form of social organization in Australia will be attended with like success.

Another consideration which appeals to many and gives them a distaste for any inquiry into the suitability of Australia's present constitutional system rests upon the close connexion between the Australian Commonwealth and the British Empire—to speak of it after the old style. Because the whole Empire stands behind Australia many seem to think that they can afford to remain indifferent as to the sort of constitution Australia has. But surely the consideration referred to cuts both ways. If the Empire owes a duty to Australia, Australia owes a duty to the Empire; and that duty involves preparedness on Australia's part to act at need up to the limit of its potential efficiency in furtherance of the objects of the Imperial partnership. For that purpose it is necessary that Australia should develop to the utmost all the elements—mental, moral, physical, financial, and so on—of its national strength; and in order to achieve this result it must govern itself properly. Hence, other things being equal, the better governed Australia is the stronger the Empire will be: and it is therefore to the joint interest of the whole Empire that Australia should have, or if without get, the means of bringing the common sense of its people to bear upon the various problems of its destiny in order to solve them all intelligently.

Since the Commonwealth of Australia Constitution Act has been in force, however, much has already happened to produce a bad impression upon those who watch the trend of events, and to put them upon inquiry as to the adequacy of Australia's present federal form of polity.

The list of problems which the existing apparatus of governmental mechanism is proving itself unable to solve is already of considerable length. There is, for instance, the problem of the unification of the railway gauges. No problem of constructive statesmanship could be simpler because every one is agreed in principle on what ought to be done. But the nation as now constituted, although it can talk at length about why the thing must be done and how it ought to be done, cannot get the thing itself actually done and finished with. Meanwhile, the State railway systems on varying gauges continue to expand and the ultimate cost of unifying those gauges slowly mounts up year by year. Then there is the problem of the drift of population towards the State capitals. At the date of Federation the proportion of the total population of the Commonwealth residing within the metropolitan areas of the respective States worked out at 35·38 per cent. In the last decennial census—1921—the proportion was officially stated as being 43·01, and it was given out that during the ten-year period preceding that census the metropolitan populations had grown more than four times faster than the strictly rural population. The drift citywards is thus forging ahead with accelerated velocity; and in view of the need of an effective occupation of the whole continent, in order that the nation's title thereto may from the point of view of international law be placed beyond the reach of challenge, the present movements of population are wholly in the wrong direction. The mean density of the total population is only about two to the square mile; and that fact gives the drift of population away from sparsely peopled areas a sinister significance which is wanting in the case of other countries whose populations are well distributed and comparatively dense. There is, as may frankly be admitted, a growing tendency in most civilized countries for their inhabitants to become more and more urbanized. But elsewhere this tendency has as a rule no direct bearing upon the safety of the country. In Australia it has, and that fact makes a world of difference. It is not, indeed, as if the mischief were wholly without remedy, especially in cases where, as in Australia, plenty of vacant land is to be had and waits to be taken up. There are springs of action in human nature which only need to be touched in order to stem the drift citywards and turn it in the opposite direction. Other things being equal, men spontaneously move towards those localities and employments where most money is to be made. The situation in Australia now rapidly getting out of control might accordingly be retrieved if free play were given to those economic forces which can shift population from where its further growth is not wanted to places where it is; and one way amongst others of doing this would be to make the primary industries more attractive than they now are to capital and labour. But instead of getting to work upon the problem with an energy commensurate with its urgency, all seven of the Australian nation's present organs of decision and action practically give it up, not being prepared to do more than encourage immigration, even if they go so far as that. Highly desirable in itself as well regulated immigration is, yet under existing circumstances it must leave the main roots of the mischief untouched. The powers-that-be in the Federal sphere of action may exercise every care to get plenty of immigrants of the right sort and may bind them over to settle down where they are most wanted—outback. But what is the use of it all, if the economic conditions have artificially been rendered such as to prevent the best immigrants from thriving in the districts where they have been planted? As things are at present to encourage immigration amounts to no more than treating the symptom instead of the disease.

A third problem which baffles the Australian nation as now constituted is that of keeping down the growing cost of government. Official year-books of the Commonwealth show that the average State taxation per head of the population, £0 14*s.* 1*d.* in 1901–2, by 1925–6 had gradually risen to £3 18*s.* 3*d.* The same year-books show that the average State indebtedness per head of the population, £53 13*s.* 11*d.* on June 30th, 1901, by June 30th, 1926 had gradually risen to £106 7*s.* 3*d.* These rises were not due to the Great War, the conduct of which did not devolve upon the States, but fell exclusively within the Federal sphere of action. That is the reason, indeed, why the above figures are not supplemented by figures showing how Federal taxation and public indebtedness have grown during the same quarter of a century. But it is not to be inferred from the omission of the last-mentioned figures that the tendencies to over-tax and over-borrow which have produced such marked results in the State spheres of action have not more or less prevailed in the Federal sphere of action also. Even if attention is confined to what has happened in the State spheres of action it is evident from the increase of taxation that the State sets of institutional machinery are not under control and are racing. As regards the increase of public indebtedness the situation has been somewhat altered. In the year 1927 the Commonwealth and the States entered provisionally into a Financial Agreement intended to regulate amongst other things future borrowings by all the contracting parties. This agreement, giving effect to what is presumably the best arrangement possible under the circumstances, has since been fully and validly ratified. But whether it will diminish future borrowings (as some say) or increase them (as others say) is a matter which remains to be proved. In any case it is not likely to do much towards checkmating in any sphere of action the exigencies of practical politics as carried on under the present federal form of polity—exigencies which drive the party in power to tax and borrow to the limit in order that it may have the money to spend in a way that will help to catch votes.

It would be superfluous though easy to add to the list of instances in which the Australian nation has signally failed to get its own public affairs well managed. The miscarriages already adduced are in themselves sufficient to show that the apparatus of governmental mechanism set up by the present constitutional system cannot be relied on—even in cases of capital importance—to do its work cleanly and without a hitch. The matter standing so, the duty of every one who has the welfare of Australia and of the British Empire at heart is to make the mental effort required in order to come to a reasoned conclusion upon the points (i) whether the existing federal form of polity is really suited to the circumstances amidst which the Australian nation's lot is cast, and (ii) whether a non-federal form of polity would not allow the nation to do itself more justice so as to increase its survival-value. That clear views should prevail upon the whole question involved is therefore a national interest of the first importance; and there is no way of attaining them except by going down to the very root of the matter at issue.

As a first step towards grasping the real nature of the many and important differences between the two forms of polity which need to be compared, it will be well to start with a clear idea of the extent of the resemblances between them; and for that purpose it will become necessary to mount to the point of view from which the science of biology surveys life in its various manifestations upon earth. Nations, whether constituted upon the unitary or the federal principle, when regarded from the biologist's standpoint and described in biological terms, are 'social organisms', and as such they present striking analogies to bodily organisms, in particular to the highest type—man. When therefore people speak, as they are wont to do, of bodies politic and of national life and national self-consciousness and of a nation's liability to dissolution and so on, they are not employing fanciful figures of speech, because there is underlying such metaphors a scientific truth. 'That an analogy between the social and bodily organisms exists,' said Professor Huxley, 'and is in many respects clear and full of instructive suggestion is undeniable.'[1] Like a man, a nation, howsoever it discharges its vital functions, has an individuality of its own and is impelled by an imperious force within it to seek after its own well-being and its own safety. In order that it may attain that—its natural—objective it must be prepared amongst other things to react to its environment, and for that purpose it needs the means of performing processes analogous to those performed by a man, when under some external stimulus he thinks, makes up his mind, fixes his will, and translates what he has willed into a definitive course of action. In the case of a nation, the corresponding processes can only be performed through the agency of some apparatus of governmental mechanism, which, be it said, need not be constructed on democratic lines, although nothing in the present connexion turns upon possible variations in that respect. The function of the apparatus, then, similar to that which the brain discharges for the human body, is to serve as the appointed means whereby the nation is to put forth its efforts to cope with the requirements of situations in which it from time to time finds itself placed. Whatsoever the apparatus does in discharge of this function is, expressed in legal or political terms, an act of government; and the end towards which the nation's whole system of governmental activities ought by its nature to work is national well-being and safety. So far no material difference exists between the two types of social organism now in question, and the analogy between nation and man holds equally good in both cases. But if regard be next had to the respective numbers of sets of institutional machinery which compose the apparatus of governmental mechanism in the two cases, the types of social organism straightway become visibly divergent. In order to get the work done which Governments-in-chief exist to do, a nation constituted upon the unitary principle employs a single set of institutional machinery; contrariwise a nation constituted upon the federal principle employs several which are not linked up together, but work independently. This divergence between the two types has an important consequence in relation to the analogy between nation and man. In the case of the nation constituted upon the federal principle the analogy breaks down altogether, but in the other case it persists at least one step further. The control which under a unitary form of polity the single set of institutional machinery exercises as by right over the nation and its way of life is comparable in its fullness to that which the brain normally exerts over the man and his way of life. The single set of institutional machinery is in such a case the nation's supreme organ of decision and action; and being, so to speak, the nation's plenipotentiary or factotum it is legally competent to do whatsoever the nation is by nature inherently competent to do, that is to say, anything and everything. Its sphere of potential operations is accordingly unlimited in every direction, and in every conceivable subject-matter of governmental action it has the right not only to say the last word but also to make that word prevail. Hence the single set of institutional machinery is the nation's one and only centre of supreme will-power; it disposes of all the nation's means of actions; and every member of the nation disobeys it at his peril. Its sovereignty over the whole nation is accordingly as indisputable as that of the brain over the human body.

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[1] Hume (in English Men of Letters Series), p. 19.

Under a federal form of polity, on the other hand, there are several centres of will-power, each supreme in its own limited sphere of action. (In Australia there are seven or perhaps eight of them.) Each of them is wholly independent of the others. Hence there is no unified control over the nation and its way of life. Therefore normally there can be neither unity of policy nor unity of action in the head management of national affairs, and the entirety of such governmental action as may be taken in regard to them must to some extent lack symmetry and shapeliness.

The contrast in the number of sets of institutional machinery employed to carry on the government-in-chief under a unitary and a federal form of polity respectively is one which stands out so boldly and is so much noticed and insisted on that many persons are prone to believe that there is no need to inquire as to the possible existence of further differences between the two forms of polity. Yet, as a matter of logic, it is abundantly clear that there must be other such differences at work; and of their covert presence the contrast in regard to the number of sets of institutional machinery is merely an outward and visible sign. Neither the unitary nor the federal principle can be put into unqualified operation for the purpose of constituting (say) a nation without permeating the whole framework of society. The principle must fulfil itself; and it must therefore, once it is adopted, give force and validity to all that is involved in it or goes along with it—its logical consequences, its practical corollaries, and its collateral effects. Everything which in some such way is incidental to the principle is found in its place as an integral factor amongst the things which really are, and thenceforward it continues to assert itself as something which there is no getting away from—something which, the form of polity being what it is, cannot but be inevitable. Each such operative factor accordingly inserts and embodies itself amongst the conditions which do not alter or change—whence it follows that whether the form of polity be unitary or federal certain conditions must prevail which are peculiar to and distinctive of that particular form of polity. As the set of typical conditions existing in either case must vary with the basal principle of which they are the offshoots and manifestations, it is a matter of sheer logical necessity that the set of conditions typical of one form of polity must differ from the set which is typical of the other.

The difference in regard to the number of sets of institutional machinery employed being a patent difference between the two forms of polity, the diversities exhibited in relation to the sets of conditions respectively prevailing thereunder may aptly be called latent differences; and they will henceforward be earmarked by that name. Moreover, with a view to a more orderly dealing with these latent differences it will be well to have recourse to a rough-and-ready method of classifying them. They fall naturally into two divisions. What may be styled the first class consists of latent differences concerned with the average working-capacity of the whole apparatus of governmental mechanism as employed in the two respective cases—that is to say, what the apparatus can be expected to do in the course of its ordinary functions, and how it can generally do it. The second class consists of latent differences whose chief bearing is upon the generation of the mental and moral forces which under the respective forms of polity set and keep the whole apparatus of government mechanism in motion and determine its action. Latent differences falling within the second class are therefore mainly concerned with the make-up of the psychological environment amidst which people living under the respective forms of polity develop their own distinctive ways of looking at things, and under whose influences they do their thinking, feeling, and acting in relation to public affairs. One class, then, has most to do with machinery, the other with motive power. In one or more cases the method of classification proposed will be found to result in a cross-division. But, nevertheless, a classification on the above lines will help to straighten out the matters to be considered which otherwise would present themselves all in a tangle. To get an adequate grasp of these latent differences it will plainly be necessary not only to identify them severally but also to work out some sort of answer to the question as to what jointly they amount to. Such a question opens a vista into the infinite. But it can be answered sufficiently for practical purposes if the assumption be made—as with perfect safety it seemingly may be—that the system of Responsible Government will continue to be practised in Australia. A change in its present constitutional system is within the region of practical politics, but a change in the system of Responsible Government is by no means so. The latter is a procedure-system, and people pin their faith to it because almost universally they believe that under it a tight hold can be kept upon the depositaries of legislative and administrative powers, and that no other system invented or to be invented could offer them as ample a safeguard against the unconscionable exercise of such powers. If it may be taken for granted that the system of Responsible Government will always be operative, whatever the form of the polity may be, the question as to the effect of the coexistence of the above latent differences resolves itself into a question as to the bearing which they must, combined together, have upon the potential efficacy of the system of Responsible Government when the latter is, as it ought to be, regarded as a means for ensuring the attainment of the national well-being and safety. This narrowing-down of the issue will help much to shorten and simplify the process of coming to a reasoned conclusion upon the whole matter.

It only remains to touch on one point more in order to clear the way for the inquiry which is to be pursued in the next three chapters. The word 'federal' is more or less ambiguous. As used to describe a principle of social organization or a form of polity its meaning is wide enough to include the States. They form integral parts of the social fabric as constructed in pursuance of the principle; indeed a federal constitution would lack one essential element if it omitted to mark off the spheres of action which the States were to have to themselves. When the word is used in such expressions as the 'Federal Government' or the 'Federal Parliament or Legislature' or the 'Federal sphere of action' its connotation obviously excludes the States and everything appertaining to them. The double meaning which the word thus bears leads to a confusion of thought which comes out in various directions. On one side it produces the whimsical result that people are reduced to a quandary as to whether the word ought in particular cases to be spelt with a capital initial letter or not. On another side it produces a result which is of great and far-reaching consequence. People are encouraged to believe—quite erroneously—that there is no causal connexion between the form of the polity and the general complexion of governmental proceedings within the spheres of action of the respective States. As already shown, the federal principle, when adopted, introduces everywhere the conditions which are typical of itself, and those conditions must make their presence felt all through the social organism and act upon the State sets of institutional machinery no less powerfully than upon the Federal set. Hence it is obvious that for the purposes of an inquiry into the identity and the importance of the latent differences between a unitary and a federal form of polity respectively, no regard need as a rule be paid to the sphere of action, whether Federal or State, in which anything significant happens.

CHAPTER II

THE EFFECTS OF FEDERALISM UPON THE MECHANICAL EFFICIENCY OF GOVERNMENTAL OPERATIONS

THERE are two postulates to which all legislative and administrative actions incidental to the management-in-chief of a nation's affairs ought to conform. The first is that every such action must grow out of and be consistent with existing realities and meet some need of the general situation in which the nation happens to be placed. Consideration of all the circumstances which have or may have a bearing upon how the subject-matter in hand is to be dealt with is therefore an indispensable preliminary to such actions. If but one of them is not taken into account the nation's fortunes at once become the subject of a gamble. The second postulate is that all legislative and administrative action must be founded upon and give expression to some coherent scheme of policy. The possibility of attaining the national well-being and safety depends not on a single action but on the combined effects of all actions. Therefore objects of policy must be so contrived that the various results dovetail into one another and work together for the public good. Policy, it has been happily said, is a unit and a whole. Accordingly a well-concerted scheme of policy must tend to produce such results as will form an orderly whole.

Both these postulates are based upon the grim realities of the struggle for existence. The correct way for a nation to react and adjust itself to its ever-changing environment must depend upon what that environment consists of. If the nation only reacts and adjusts itself to some features of its environment, it places itself at the mercy of events and risks its own extinction. Hence the first postulate. Again, if the nation is to perform the duty which it owes to itself of reacting and adjusting itself to its environment it cannot afford to leave anything to chance. It must strain every nerve to evolve in the right direction. Its efforts, to achieve their best effect, must be devoted to making its legislative and administrative actions as well-balanced and coherent as possible. Hence the second postulate. Both of them, then, are imposed by what is inherently necessary for the proper conduct of national life. There are a number of other aspects in which these postulates are equally apposite and equally obligatory. In the waging of war, for example, it is well recognized that military operations must be regulated by reference to the actual requirements of the particular situation to be coped with. All the known vital factors in it must therefore be brought into focus together, and as much insight as possible gained into the true inwardness of the actual state of military affairs before the army is committed. In this connexion Napoleon expressly warned his marshals against the danger of making pictures for themselves. Moreover, no plan of campaign can be sound which fails to make the military operations which it initiates fit in together and combine towards the achievement of the strategic purpose aimed at. The course of events upon the Western front during the last stages of the Great War furnishes a signal illustration of the large part which co-ordination plays in the efficient conduct of war. Until the Allied and Associated armies in France had united themselves under a single leader they fought at a disadvantage, because there were no adequate means of duly co-ordinating the military operations which they more or less independently undertook. As soon as Marshal Foch took command the situation changed for the better at once and went on improving until Germany was finally brought to her knees. Another example of the wide applicability of such principles is to be found in the navigation of a ship: and how apt is that example, for the word 'govern' in its etymological sense means nothing more nor less than to steer. When a ship is shaping its course towards its port of destination all the factors such as the ship's latitude and longitude, the geographical position of the port, the deviations of the compass, and the prevailing winds and currents, must be taken into account; and from them a calculation made of the right course to be steered. Reference to existing circumstances so far as material in their entirety must be made if the voyage is to be continued in the right direction. Again, for the efficient working of the ship the duties of the crew must be allotted according to some well-thought-out scheme. Every man of it must know what he has to do and when and how he is to do it; and the combined efforts of all of them must leave no part of the necessary work undone. Without due co-ordination of all forms of activity on board the proper management of a ship under way is impossible. Just such principles must be observed when a multitude takes organized action to struggle through towards some final but far-off goal; and unless they are steadfastly observed in their integrity success will not even be deserved.

To base all legislative and administrative actions upon the principles already treated of is an operation of government which under a unitary form of polity is not complicated by any difficulties of a mechanical kind. The apparatus of governmental mechanism for the management-in-chief of the nation's affairs, being omnicompetent, cannot possibly lack aught of the powers necessary for the successful achievement of the operation. Those powers are therefore always available for use, and the conditions which prevail are likewise favourable to their being brought into regular use in the ordinary course of official routine. Those at the head of affairs hold at the centre of things a post which invites them, and indeed requires them, to keep everything appertaining to the nation's situation in the world under their constant observation. But when they have got the hang of the whole situation as well as they can they are made to feel that they have taken but one step towards the fulfilment of their duties. Further steps suggest themselves as needing to be taken in continuation of the first, and they consist in adapting the whole current system of governmental activities to the sum of the surrounding circumstances and in making that system coherent within itself. No extraordinary effort is demanded of them to do as much as this, involved as it is in their daily round of duties. But to do less than this would leave the main part of their duties undone. Under such conditions they are practically forced to try to carry out the whole operation. They may carry it out ill. But that does not matter for present purposes. The important thing is that the attempt to carry out the operation is made almost as a matter of routine. Hence under a unitary form of polity the average working-capacity of the engines of government-in-chief is sufficient to enable them to perform the processes of regulating all legislative and administrative actions by reference to the nation's situation in its entirety, and of co-ordinating all such actions so as to make of them a coherent whole—which processes if duly performed satisfy the postulates already mentioned.

As under the present federal form of polity the management-in-chief of Australian public affairs is distributed between seven independent sets of institutional machinery, it follows as a practical corollary that there must be an allotment of the shares which they are respectively to take in such management. Otherwise there would be chaos and confusion. Certain specified subject-matters of governmental activity are accordingly assigned to the Federal set of institutional machinery which in respect of them has jurisdiction throughout all the States. All other subject-matters of governmental activity are, within the States, left in terms to the State sets of institutional machinery.

An exception to this general scheme exists in the case of the Federal Territories. In them the jurisdiction of the Federal set of institutional machinery is exclusive and as regards the subject-matters of governmental activity unlimited. It will tend to shorten and simplify matters if constantly repeated references to this exception can be dispensed with. For that reason and also the further reason that the population of each of the Federal Territories on the mainland of Australia is, to say the least, exiguous, it is proposed to treat the exception as negligible.

Henceforth the Federal Territories will accordingly be left out of consideration.

To speak broadly, then, the Federal and the State sets of institutional machinery all have limited spheres of action; and the restriction of the scope of their activities inevitably involves a restriction of their fields of vision. Each of them has business of its own to mind; and in the course of minding that business it gets into the way of concentrating its attention upon those factors in the nation's situation as a whole which seem to it to have a material and obvious bearing upon the discharge of the various sovereign functions committed to it. Its regular work can to outward appearances be done in a passable manner without paying any attention to all other factors affecting the national interests. Such extraneous factors do not come under its official cognizance and it neither keeps itself informed nor concerns itself about them. This habit of having an eye for only some of the factors in the nation's situation and of allowing all the rest to escape notice reacts in due course upon every set and affects its sense of the relative importance of things. It fails to see any necessity for taking a comprehensive view of the whole state of the nation's affairs or of relying upon what would thereupon appear as the best guide to the legislative and administrative actions required of it. It is satisfied to keep its eyes as a matter of course within its own sphere of action and to prevent them from wandering further afield. Accordingly, what it then and there sees within its narrowed horizon determines as a rule its general line of conduct and the various objects of policy which it advisedly pursues. To say that under no circumstances could each set of institutional machinery work up to the standard of regulating its legislative or administrative action by reference to the exigencies of the nation's situation as a whole would possibly be going too far. There may conceivably be cases in which spasmodic efforts can be successfully made in that direction. To be on the safe side it will be well then to take it for granted that the maximum working-capacity of the engines of government-in-chief is sufficient to enable them occasionally to perform the process of casting all legislative and administrative action within the nation into such a shape as to conform to the first of the postulates. What really matters in the long run is, however, not the maximum but the average working-capacity of those engines; and there can be no manner of doubt that a process of the above nature lies beyond the compass of their average working-capacity. To all practical intents and purposes the first of those postulates is rendered a dead letter. An analogous train of reasoning shows that there must be a like incapacity in regard to the second postulate. The independence relatively to one another of all seven sets of institutional machinery places each of them so to speak in an insulated compartment in which it is safe against interference by the others and can if it so pleases work as it were in a world of its own. The security of the positions in which all the sets of institutional machinery are thus ensconced exerts a corresponding influence upon the temper in which they discharge their functions. They are entitled as a matter of strict right to act upon their independent judgements as to how all matters in their respective spheres of action ought to be managed, and as their sense of self-importance is flattered by the exercise of that right they insist on giving effect to it in season and out of season. Accordingly, they inevitably tend towards being self-centred in their way of looking at matters affecting their spheres of action. They fail to recognize how much is staked upon the order and coherence of all governmental operations within the frame of the nation and how essential it is that those operations should combine to work out some definite and common purpose running through them all. Whereas all seven sets of institutional machinery should make serious efforts to achieve the all-important unity of policy and unity of action they one and all are inclined to act independently. The master-motive of each of them is to have full effect given to its own views as to the right policy to be pursued in its own sphere. Each is bent at all hazards upon making its own will prevail, and therefore takes no pains in general to accommodate and adjust its own legislative and administrative actions to those being simultaneously taken by the other sets of institutional machinery. All seven of them being of like proclivities there is little or no possibility of regular teamwork amongst them. In the main they are as wayward and ill-fitted for pulling steadily together as so many wild horses would be. In certain cases, indeed, where there is virtual agreement on all sides as to what are the right things to do they are sometimes prepared to co-operate with one another: but even in such cases whole-hearted co-operation is the exception and not the rule. The Commonwealth and the three States immediately concerned have succeeded, for example, in agreeing upon a scheme for the better usage for irrigation and navigation of the waters of the River Murray. But they were all under misapprehensions as to what expenditure of money and time would be required for the execution of the scheme. On the other hand, very little has come of the repeated attempts to secure co-operation between the Commonwealth and all the mainland States for the purpose of unifying the railway gauges. To save the Commonwealth and all the States from raising the rates of interest against themselves by cut-throat competition for loan moneys on the Australian and other money-markets they have no doubt entered into the Financial Agreement referred to in the First Chapter. But an effort to secure uniformity in the procedure for assessing the income-taxes imposed by the Commonwealth and the respective States ended in the tax-payer's obtaining the illusory boon of being—in some but not in all cases—allowed to furnish on one form of return the particulars of income which had previously to be furnished on two. These instances prove that co-operation between all seven sets of institutional machinery is problematical even in matters where no broad question of contentious policy is involved. There is therefore all the less reason to believe that the seven of them could ever by mutual agreement co-ordinate their legislative and administrative actions in cases which would involve a substantial surrender on their parts of the right to prescribe the scheme of policy to be pursued in dealing with vital matters in their respective spheres of action. To make such a sacrifice would with all of them so go against the grain that in the ordinary course of things they would never willingly consent to it. Nor can any effectual means be found of forcing them to do so. There being thus the possibility—though in a very limited class of cases—that the seven sets of institutional machinery will so far co-operate as to make their legislative and administrative actions proceed agreeably to a coherent scheme of policy in some branches of national affairs, it would fall short of being literally true to say that under no circumstances could the working-capacity of the engines of government-in-chief be equal to performing the process of making legislative and administrative action within the nation conform to the second postulate. On occasions the performance of that process may conceivably come within the maximum working-capacity of those engines. But it is substantially true to say that the performance of that process is beyond their average working-capacity. That being so the second like the first postulate must in the main be reduced to a dead letter. As a result, no impress of a directing mind will in general be found stamped upon the total head management of public affairs. On the contrary a go-as-you-please attitude will be in evidence everywhere. It appears, then, that one of the latent differences between a unitary and a federal form of polity takes the shape of a distinction in respect of the average working-capacity of the apparatus of governmental mechanism employed in the respective cases, and that the gist of the distinction consists in this: that the nation in the former case has, and in the latter case has not, at its command the means of procuring the punctual performance of the twin processes of regulating all legislative and administrative actions taken in the course of the management of public affairs by reference to the exigencies of the nation's situation in its entirety, and of so co-ordinating all those actions as to make of them a coherent whole. In view of the vital nature of this conclusion, it will be well, before proceeding to deal with other latent differences to be included in this chapter, to show by the clear evidence of plain matters of fact how the inability of the Australian nation as now constituted to get the above processes regularly performed results in a lowering of its own survival-value. Concrete instances pointing in that direction are writ large over the whole field of governmental activities in Australia. There is, for instance, the neglected drift citywards. That ominous streaming back of population from inland parts to the seaboards imperils the national well-being in more than one way, but it is most overtly mischievous in that it suggests that the Australian nation is relaxing its efforts to people the entire continent. It therefore invites and incites foreign powers to ask whether the nation is really in effective occupation of the whole of the territory which it claims as its own. To anticipate and forestall that danger it is obviously necessary that an increase in the effectiveness of the occupation of the entire continent ought to be made the starting-point and chief article of domestic policy in Australia; and to achieve that object all available means ought to be taken to expedite the course of settlement throughout Australia until the whole territory has been turned to profitable account. The natural way of doing this is to make rural industries as attractive as possible to capital and labour; and therefore the whole scheme of policy to be pursued ought to be so moulded in all its branches as to prove faithful to the spirit of the formula: 'Take care of the country and the town will take care of itself.' When it is seen what great interests are at stake it might be supposed that the sight of these formidable movements of population in the wrong direction would serve as a stimulus powerful enough to force the seven sets of institutional machinery to respond to it, and to goad them into strenuous efforts to cope before it is too late with so grave and growing a malady of the national organism—the more especially as it is fairly obvious what is the mark at which any system of constructive policy ought perforce to aim. The event proves, however, that they are so lacking in the sense of reality as to ignore any prompting of that kind. Nay, they persist in clinging to articles of policy—it will be sufficient to consider three of them—whose repercussions upon rural industries and rural interests must be such as to sustain and quicken the drift citywards.

The course of policy pursued in regard to the customs tariff—a subject-matter of governmental activity which falls within the Federal sphere of action—can now be seen to move steadily in the direction of high protection of secondary industries all round. It is not considered sufficient that goods of Australian manufacture should be enabled to compete on even terms with goods imported from abroad—a degree of protection which should make the consumer the master of the situation because competition between goods of internal and external origins would operate to his benefit. The general tendency now is to prevent as far as possible imported goods from competing on anything like even terms with Australian-made goods—a degree of protection which must make the Australian manufacturer the master of the situation and turn the consumer, whether urban or rural, into his tributary. The growth of this system of high protection for secondary industries cannot but inflict damage on primary industries. It tends to increase the expenditure required before land can be rendered suitable for primary production, inasmuch as more must be paid for the necessary implements, machinery, and manufactured materials. It has a similar effect upon the prices of the appliances needed for the carrying-on of primary production as soon as the land has been prepared for it. Moreover, as the Federal tariff imposes duties on the materials imported for the State-owned railways, the charges for freight on railway-borne goods consigned to or dispatched by the primary producer must in the ordinary course of things be all the heavier. Besides thus increasing the primary producer's outgoings, the above system of high protection also tends to diminish in most cases his net returns. The bulk of the products of rural industries are exported and paid for overseas, and in the usual course of trade the purchase money is remitted to Australia in the form of goods manufactured abroad. Customs duties are payable on these goods before they can be landed in Australia; and that being so there is no escape from the conclusion that the staple products of rural industries will in the majority of cases not be worth to those who produce them as much as they otherwise would have been. To speak broadly, then, the above policy of high protection hits at the man on the land in three ways and takes three squeezes out of him. Obviously such a system must prove harmful to rural interests and rural industries in the vast majority of cases.

Another article of policy which is more or less generally acted upon makes land taxation proceed upon the basis of the unimproved capital value of the land. Land is taxed for the purposes of local government. It is also taxed when above a certain value for the purposes of Federal finance. In some States it is also taxed for the purposes of State finance. Land is virtually the raw material of rural industries; and therefore there is a strong reason against the taxation of country lands at all, at any rate for the purpose of swelling the revenues of either the Federal or the State Governments. But apart from that, the method as now generally practised in Australia of taking the unimproved capital value of land as the basis of taxation is needlessly harsh towards rural interests and rural industries. In one direction it operates to rob the pioneer of his due reward. The man who goes outback ahead of others and invests his capital in the purchase of a block of land upon which he settles down may reasonably expect that when the tide of settlement catches up to him there will be a rise in the value of his land and that thus he will eventually be compensated for the early hardships to which he and his household had been exposed. The fact that he has shown the way helps to induce others to follow in his footsteps; and when they have settled down beside him, to call the eventual rise in the value of his land 'unearned increment' is merely paltering with the truth. Nevertheless the concentration of land taxation upon the unimproved capital value of land—at least when the Federal or a State

Government resorts to that method of raising current revenue—has in the long run the effect of sequestrating for public uses that increment of value as if it were stolen property. The tax-gatherer is thus enabled to wring from the pioneer the well-won recompense of his fortitude and enterprise. In another direction such a system of land taxation produces results which are much more widely spread. The ratio of the value of the improvements to the capital value of the land by itself in a sufficiently improved country property is in general far from high. For instance, a freehold property may carry as many sheep as it can from an economic point of view, and carry them well, if it has been improved to such an extent that the total value of the improvements is roughly equal to the unimproved capital value of the land. In such cases there is a natural limit beyond which profitable expenditure on improvements cannot go. There is on the contrary practically no limit to what can profitably be spent in placing improvements on a well-chosen building site in a steadily growing city such as a State capital. The value represented by a sky-scraper building may easily be many times the value of the bare site upon which it is erected. Under these circumstances the limiting of land taxation for any governmental purpose to the unimproved capital value of land causes city properties to offer investors better openings than country properties. If the sum to be invested be (say) twelve thousand pounds the investor, if he puts it into a country property where the total value of the improvements is about equal to the unimproved capital value of the land, will have to pay his land taxes, two or perhaps three in number, on the equivalent of six thousand pounds. If on the other hand he puts his money into some city property improved or capable of being improved to such an extent that the total value of the improvements on it is or may be made five times the unimproved capital value of the land—a ratio which would not be at all out of the common—he will have to pay his land taxes, whatever their number, on the equivalent of two thousand pounds. No one in his senses would hesitate for a moment as to which of the two modes of investment to prefer. There is therefore no inducement to a man who has been successful in business in one of the large cities to buy and work a freehold property in the country. A judicious investment in city property in some one or other of the State capitals will yield him an income which, besides being subject in only a minor degree to fluctuation on account of the vicissitudes of the seasons, will probably be as large as the average return to be expected if the sum available be employed in some rural industry. The manifest superiority of city property as a form of investment will also appeal to one who has made his fortune in some country pursuit. The man and his money in the ordinary course of things will probably drift citywards. A steady supply of business acumen and of replenishments of capital are essential if rural industries are to flourish and expand; and under the circumstances stated there must arise a tendency towards a falling-off in the supply of both requisites. If one thing be taken with one another it becomes quite clear that the basing of the taxation of land solely on its unimproved capital value must prove harmful to rural interests and rural industries.

A third article of policy which is put into more or less general practice is industrial arbitration. There is a Federal and in most States a State Court of Industrial Arbitration. Such a description of what these Courts are for is, however, somewhat misleading. They possess power—more extensive in theory than in reality—to adopt coercive measures for the enforcement of their awards; and in sum and substance the so-called industrial arbitration amounts to a system for the regulation by governmental action, brought to bear through the agency of judicial tribunals, of the rates of wages to be paid and the conditions of employment to be provided in a multiplicity of industries and business undertakings. The jurisdiction of these Courts extends over rural as much as over urban industries. But the awards made in the exercise of that jurisdiction tend to affect the two classes of industries differently. Urban industries are for the most part carried on in buildings erected for the purpose. The employees as a rule work under cover; and most, if not all, of the conditions of their employment can be regulated in such a way as to leave no legitimate cause of complaint. In rural industries, on the contrary, much of the work must be done in the open and under conditions which cannot be changed at will. No award of a Court can operate so as to shield the boundary-rider, the ploughman, and the bush worker from wind and weather; nor to diminish the strain of work which must be carried on at high pressure on such occasions as shearing, harvesting, and the like; nor shorten the distances to be travelled to work in country parts; nor give relief from the many inconveniences incidental to life on the outskirts of civilization. For that reason the conditions of employment in rural industries do not lend themselves to modification in the interests of the employees as fully and effectually as in urban industries. Hence one result of the all-round activities of Courts of Industrial Arbitration must necessarily be to differentiate rural and urban industries in regard to the attractiveness of the prevailing conditions of employment; and the superior attractions of urban industries in this respect must necessarily tend to lure citywards those who would, if let alone, have been content to remain where they were and do the work that the country had to offer them. Thus employers in rural industries through no fault of their own become beset with the difficulty of getting the necessary number of men to work for them. Those who would otherwise have been available have, as the employers find on inquiry, taken their departure in order to get employment more to their liking in some urban occupation or industry. One operation of the system of industrial arbitration is, then, to interfere with the supply of labour for rural industries. It also operates in a somewhat similar manner as regards the supply of fresh capital. In the main, urban industries are secondary industries which are well sheltered by reason of the ruling system of high protection. They are carried on under the lee of a high tariff wall, and most of their products never leave Australia. The proportion of their total output of manufactured goods that is marketed abroad is in fact so small that for present purposes it may be disregarded. The activities of the Courts of Industrial Arbitration in regulating rates of wages and conditions of employment have the effect—to speak broadly—of increasing the costs of production in Australian industries generally. In the case of urban industries all extra charges accruing in this manner can under the circumstances stated be passed on; and in practice that is what uniformly happens. Such industries are in effect indemnified by the general public against the burdens imposed upon them by the system of industrial arbitration, and they are in as sound a position from a financial point of view and can show as good a profit as if the system did not exist. Sheltered and indemnified as they are in general, urban industries can as a rule command all the capital that they require. On the contrary, for rural industries there is neither shelter nor indemnification to any extent worth speaking of, although under the influence of the system of industrial arbitration the costs of production in them tend to mount as high and as steadily as elsewhere. The bulk of the output of rural industries consists of primary products destined for consumption overseas. They have to compete against similar and rival products from other quarters of the globe and the prices that they will fetch will in consequence be settled by the law of supply and demand operating in the markets of the world. Apart from the disturbing influence of the system of high protection, the values of the staple products of rural industries in Australia must fluctuate with the movements experienced in the world market, no matter what those products may have cost to produce. Hence the extra charges imposed by the awards of Courts of Industrial Arbitration upon production in rural industries cannot be passed on as they can in the case of urban industries. They must be defrayed out of the gross returns, and they therefore must come out of the potential profits. In rural industries, then, the margin of profit is to an extent which cannot be foreseen liable to be reduced by the activities of the Courts of Industrial Arbitration. That being so, those who have the control of money prefer to look elsewhere when they seek to put it into a safe investment; and the volume of fresh capital available for rural industries accordingly tends to fall below what is required if those industries are to flourish and expand. Ultimately, therefore, the system of industrial arbitration works in the direction of depriving rural industries of the necessary supplies both of labour and of capital, and there can be no doubt that it tends to depress those industries and is highly detrimental to rural interests generally.

None of the three articles of current policy which have now been reviewed could possibly find a place in any well-thought-out and well-digested scheme of measures directed towards getting settlement to spread itself as freely as possible through the length and breadth of the continent of Australia. And yet the seven sets of institutional machinery in the presence of the growing drift citywards persist in courses of action so contrary to the real requirements of the situation as to amount to an aiding and abetting of that drift. Maybe in other branches of the management-in-chief of public affairs those in charge of the seven sets of institutional machinery do sometimes act as if they had a real sense of the need of countering the drift. But even so their management-in-chief of public affairs must be considered as a whole, and if it be so considered in its bearings upon the drift citywards there cannot well be a doubt that the apparatus of governmental mechanism as now existing in Australia lacks the vision and the power to deal with so vast and so complicated a social phenomenon. The result in this connexion of the nation's inability to obtain the due performance of the twin processes referred to above therefore is that there are no means whereby the idea of the need of a more effective occupation of all Australia can transform itself into a motive force in practical politics and make itself prevail. No one has a word to say against making that idea a principle of governmental action, but yet under the conditions distinctive of the present federal form of polity it wields no decisive influence over the courses of events. When all has been said and done it remains a mere pious aspiration, a pining for what is not.

In the management of the national finances the total results produced by the workings of the present federal form of polity are no more successful. In neither connexion can the common sense of the members of the nation freely assert itself or shape the results as a whole into what it would have them be. The light of nature teaches every one that taxation ought not to take too much in all out of the pockets of the people, that the incidence of the prevailing system of taxation ought to be just, and that the moneys raised by taxation ought to be spent to the best advantage. Each of these principles is of self-evident validity, and all would agree that any financial measure infringing one or more of them must be inconsistent with the attainment by the nation of its own well-being and safety. Simple as these principles are, it is nevertheless advisable to look into them somewhat closely in order to see what is essential to their being duly observed. The first of these three principles implies that there is a limit to the total amount that a nation consistently with its other interests can afford to pay away year after year in taxes. A certain proportion of the total store of wealth produced will not be missed if it evaporates in that way. But if that proportion be persistently exceeded people will tend to lose heart and relax their efforts to better themselves. The action of the economic forces which cause wealth to reproduce itself will thus be interfered with, and in consequence the national resources will begin to decline. There are therefore due bounds within which the total taxation must perforce be kept and—assuming that other sources of revenue are non-existent—those bounds represent the natural limit up to which the nation can afford to find money for the operations of government, and beyond which in justice to itself it ought not to go. That there is such a natural limit is certain: but at first sight it is far from obvious where the line showing that limit is to be drawn. The only course open under the circumstances is to resort to the method of trial and error; and, with the help of all such data as may be available to start with, form a working hypothesis as to the whereabouts of the line, the hypothesis being revised over and over again in accordance with the lessons of experience until at last a rough idea is gained as to where the line runs and what round figures will express it. When this measure of finality has been reached there is then something definite to go upon. The maximum annual amount that can safely be raised by taxation and (assuming that there are no other sources of revenue) spent upon the operations of government can thus be translated into a known quantity. Being a known quantity it provides a standard by reference to which the degrees of taxation can be measured. Hence the common-sense principle that taxation ought not to take too much in all out of the pockets of the people can be duly put into practice when means are available of procuring an authoritative and efficacious determination of the maximum sum which the proceeds of the total taxation ought not to exceed, and of regulating the whole system of governmental activities so as to prevent that sum being exceeded. If means are not forthcoming for either purpose, then the principle must fail to realize itself in practice. As to the second principle of sound finance there is no room to doubt that the incidence of the total taxation has also an important bearing upon the action of the economic forces which cause wealth to reproduce itself. Those who feel that they are sustaining more than their fair share of the entire burden of taxation are not in a fit frame of mind for doing their best in the cause of wealth production. They nurse their grievances and become restive and exert themselves less strenuously in their callings than they otherwise would do. So also if taxation discriminates against any particular industry, no matter what, the latter must tend to fall away and languish and lose its power to attract fresh brains and fresh capital. It is therefore axiomatic from the point of view of economics that the incidence of the total taxation should be just. But at first sight it is not apparent what would be just in that connexion; and as in the case of the first principle, resort must be had to the method of trial and error. A scheme purporting to regulate the incidence of the total taxation as justly as possible must be pieced together bit by bit and gradually improved upon until it is found to stand the test of experience and work without serious friction in any quarter. If, then, there is any authorized agency qualified to expand into a well-balanced scheme the idea of what is just in relation to the incidence of the total taxation and to arrange the whole system of taxation in conformity with it, the principle can be rendered capable of bearing fruit in practice. But if there is no such agency the principle must remain virtually barren of results. As to the third of the above principles of sound public finance no one will dispute that some of the subject-matters of governmental activity have a more direct bearing than others upon the attainment of the national well-being and safety, and therefore are more unquestionably needed. If the money raised by taxation is to be spent to the best advantage, a certain sense of proportion must guide its allotment between the various forms of governmental activity which it is designed to support; and to that intent the method of trial and error must be applied for the purpose of grading all the actual or potential forms of governmental activity within the nation in the order of their relative importance. Definite views prevailing in high places as to how the various forms of governmental activity ought to take rank must tend to help to bring about their own fulfilment, and thus to provide some sort of a safeguard that funds required to make due provision for the more essential governmental services will not be diverted to the benefit of the less essential; and that if there is not enough money to go round, the latter rather than the former will be the ones to go short. For the purposes of making the principle in question workable in practice it is therefore necessary that there should be some constituted authority competent to fulfil the double task of fixing the order of precedence to be observed in supporting the various forms of governmental activity within the nation out of the public revenues, and then of applying those revenues—at least so far as they will go—in compliance with the settled scale of preferences. If the nation does not possess a constituted authority of sufficient competence to fulfil that double task, the principle must remain more or less void of effect and be liable to be accounted a mere counsel of perfection. It appears, then, upon a closer view of all three commonsense principles for the sound management of the public finances that of themselves they have little or no power. One and all they need to be implemented; and to that end it is necessary that the apparatus of governmental mechanism through which they are to be translated from the abstract into the concrete should also be able as a matter of course to perform in regard to the whole business of government the twin processes referred to at the opening of this chapter.

In Australia the coexistence under the present federal form of polity of seven sets of institutional machinery, each working in its own sphere of independent action, involves as a practical corollary the coexistence of seven independent systems of public finance. If each set of institutional machinery is really to work independently of the rest it must be the sole judge of what its own financial requirements are, and therefore (subject to any express agreement or consitutional provision to the contrary) it must be in a position to tax, borrow, and spend up to the limit of the possible, regardless of what every other set may likewise be doing in the exercise of its coextensive powers. Thus the nation's financial affairs are subjected to a divided control, and in addition two independent financial systems are uniformly brought into concurrent operation over one and the same local area as defined by the boundaries of each of the respective States. Side by side in every State there are in operation its own financial system and also the Federal financial system covering all the States. Under such conditions the nation is left without any piece of institutional machinery competent to control the whole administration of the national finances, and having consequential and ancillary jurisdiction to decide finally upon all matters incidental to that control. In the result, the nation is powerless to get clear ideas formed in high places as to how much it can afford year by year to spend in defraying the cost of government, or as to what incidence of the total taxation is rightly to be accounted just, or as to what is the proper order to be observed in satisfying out of the public revenue the rival claims of the manifold forms of governmental activity. On points such as the above there are no means of obtaining rulings upon which to found the general management of the national finances, and that being so the three principles of sound finance which have previously been passed in review must remain mere naked principles which, in default of the terms in which they are expressed being rendered more certain, will be liable to be generally ignored. In the case of the first of the above principles, indeed, it would not be sufficient merely to obtain a ruling as to the total sum that the nation could afford year by year to spend upon government. It would also be essential to obtain a further ruling as to how that total sum as authoritatively fixed was to be apportioned between the seven sets of institutional machinery so that each of them might be fairly rationed. But as that question could not arise until the total sum to be apportioned had become definitely known—which it can never be—it is not necessary to go further into the matter. Under the present federal form of polity, then, the idea that there are bounds within which each set of institutional machinery must at all hazards keep when raising its quota of the total taxation fails to exert any real pressure upon those at the head of affairs, and it is easy to understand why. To all intents and purposes those bounds remain past finding out. The charge that taxation in any instance has overstepped them is one which can never be proved; and therefore no one concerned need be the least apprehensive on that score. Hence for practical purposes the situation becomes virtually the same as if those bounds were non-existent. Those at the head of affairs thus get their hands free. Desiring to magnify their offices they tend to go on increasing the volume of government activities, and every increase of that nature generally brings with it a corresponding increase in the amount of the total taxation. In the result the annual sum taken by taxation out of the pockets of the people has gone up by leaps and bounds. That clearly appears from the official figures quoted in the previous chapter, which sufficiently prove that under the present federal form of polity the first of the above-mentioned three principles of sound finance does not succeed in making itself prevail. The same thing has happened and is happening in the case of the second principle. Those in charge of the Federal and respective State systems of taxation have signally failed to see the need of making the incidence of the total taxation—Federal and State together—as just, all round, as possible. They have been too much absorbed in the courses of events within their separate spheres of action to think of co-operating for the purpose of regulating all forms of taxation so that it may not press with unfair weight in any quarter. The far-reaching importance of such an object of policy has been lost upon them all the while, and the result speaks for itself. The primary industries of Australia have been burdened with a load of taxation, some forms of which have already been discussed, and that burden—aggravated as it has been by the ill effects produced by similar failures in other departments of policy, both Federal and State, to rise to the level of the general situation—has checked the expansion of those industries and brought some of them to the verge of extinction. In view of this highly significant and untoward result it is safe to conclude that the principle in question has for practical purposes been treated as non-existent. In regard to the third principle of sound finance, that has equally been nullified by the lack of adequate means for its enforcement. No doubt the Federal set of institutional machinery has always been in a position to grade the various forms of governmental activity within the Federal sphere of action, and then to apply the funds coming to it in supporting them in their order as so fixed. In like manner each State set of institutional machinery has always been able to deal similarly with all forms of governmental activity prevailing within its own separate sphere of action. But what has continuously been lacking is institutional machinery which could grade the various forms of governmental activity within the nation for the purpose of settling amongst them generally the order of precedence in which their respective claims to support were to be satisfied. In the absence of any such machinery some of the results produced have verged on the anomalous. For instance, those in charge of the Federal financial system are as a rule short of funds to make due provision for the efficient defence of the Australian continent, whilst those in charge of certain State financial systems have all the time been able to command large sums of money to spend upon vote-catching projects pleasing to the State capitals. Under the conditions which now exist for the management-in-chief of the national finances, therefore, it can easily happen that essentials are sacrificed to non-essentials, and when that happens the nation obviously fails to get the real worth of its money. One thing being taken with another it appears that the inability of the nation as now constituted to secure the punctual performance of the twin processes referred to at the opening of this chapter has on the financial side of government led to the conduct of public affairs in a fashion which is plainly inconsistent with the attainment of the national well-being and safety. Common-sense principles of sound financial management have not, because they could not, become operative as settled rules of practice: and in the result the whole state of the public finances has remained one of organized disorder.

Two independent systems of governmental activity cannot be set and kept in motion within one and the same local area—as under the present federal form of polity is the case in each and every State—except at the risk of incidental complications. On occasions the Federal and the State lines of governmental action fall foul of one another. When that happens, the nation by its agencies for taking legislative or administrative action is virtually at cross-purposes with itself, and gets, so to speak, in its own way. On other occasions the two lines of governmental action run side by side, producing duplication. When that happens, the nation's energy and money are being wasted in getting the same thing done twice over. Two instances where collisions occur between Federal and State governmental activities have already been mentioned in previous connexions. Railway material imported for use on the State-owned railways is, as already said, subject to customs duties on being landed in Australia; and the same thing happens to sundry other articles consigned to State Governments or State instrumentalities. The exaction of customs duties in such cases necessarily tends to increase the cost of government in the States, but it is difficult to see how such a result is to be avoided without producing some greater mischief. If the States had the privilege of importing duty-free all the commodities they needed, the privilege would probably be as grossly abused as was that of franking letters when enjoyed by members of the Imperial Parliament. Quite possibly the States might eventually enter into business as universal providers of commodities that the consuming public required. If on the other hand the Federal Government were allowed unlimited discretion to exempt the State Governments from payment of customs duties in particular cases, there would be a danger of incessant bickerings over the exercise of so invidious a power. The levying of customs duties on articles imported for the purposes of the States is therefore not to be attributed to perverse policy. A choice had to be made between three evils, and so far as appears the Federal constituted authorities have chosen the least. The other instance previously mentioned where Federal and State Governmental activities come into collision has been in regard to the floating of loans upon the Australian or other money-markets. But collisions of this sort will be obviated in the future if the Financial Agreement already referred to is not evaded, as it easily can be, but loyally observed both in the spirit and the letter. Another subject-matter of governmental action on which collisions have occurred is in relation to the establishing of Government Savings Banks. When the Commonwealth took over the Post Offices throughout Australia it obtained control of the officials and the buildings necessary for a nation-wide network of branches of the Commonwealth Savings Bank, and it was not slow to make use of the special facilities thus placed at its command. Some of the States speedily saw the wisdom of abdicating this function of government in favour of the Commonwealth as being able to discharge it to better advantage than they. Not so others of the States. Indeed one of them—New South Wales—has gone to such expense in erecting fresh buildings in populous centres and in maintaining a large staff of officials that it is obvious that the encouragement of thrift has not been the sole motive at work. That particular case, instead of being one of duplication, as at first sight it might seem to be, is in reality a clear example of collision. Another fertile cause of potential collisions is the wide jurisdiction vested in the Federal Court of Industrial Arbitration—a jurisdiction which would enable it to prescribe the rates of wages and the conditions of employment in undertakings such as, for example, the State-owned railways. As those railways have for the most part been constructed with borrowed money it is important that they should return sufficient profit to pay interest on the cost of their construction. Otherwise the State taxpayers must make good the deficiency. Hence the railway systems of the respective States have as a rule been placed by State statutes in charge of Commissioners whose duty it is to make them successful commercially. Whatsoever such Commissioners may do in regard to wages and conditions of employment in the railway services under their management is, however, liable to be upset by awards of the Federal Court of Industrial Arbitration. Thus there are all the makings of a series of collisions between State governmental activities, as brought to a point in the measures adopted by the Railway Commissioners, and Federal governmental activities, as finding expression in the awards of the Federal Court of Industrial Arbitration. It is not suggested that there has been any lack of circumspection so far in the proceedings of that Court. But power as absolute as that vested in it is sure sooner or later to be abused; and therefore there is no knowing when some ill-considered decision on its part may not involve one or more States in financial difficulties as the sheer result of the clash of Federal and State governmental activities. The Federal Court of Industrial Arbitration in its turn is liable to have its efforts to promote industrial peace thwarted by forms of governmental activity originating with a State. It happened, for example, on one occasion that the Federal Court duly fixed the general rates of pay for sheep-shearing. Then a State Court of Industrial Arbitration issued an award fixing the rate to be paid for the same work within that State at a somewhat higher figure. The latter award had repercussions in neighbouring States and there led to a strike amongst the shearers—the very result which the Federal Court had sought to avert. A similar consequence supervened upon the passing of the Forty-four Hours Week Act by the State Parliament of New South Wales. There were strikes at once in those callings which, being regulated by awards of the Federal Court of Industrial Arbitration, were outside the legal operation of the Act. To the above list of collisions, overt or potential, one more may with advantage be added. It was the common practice in Sydney during the second half of the Great War to time for the small hours of the morning the marching of troops down to the transports which were to take them overseas. Under the State Licensing Act, six o'clock was the hour when the hotels were to open, and experience had shown that it was well to have the troops on board before the striking of that hour. A regular supply of recruits in sufficient numbers was one of the things essential to a proper discharge of the Federal function of defence; and it would obviously have tended to help recruiting if every occasion when troops were going off for active service abroad was marked by an impressive demonstration on the part of the public. To that end it would have been desirable so to arrange matters that the streets along which the troops were to pass might be lined by great masses of people cheering and applauding, and that the general enthusiasm might be excited to the highest pitch. The early hour at which the troops had to be moved put all such outbursts of popular feeling out of the question; and in the absence of all stirring incidents of that order recruiting fell off more than it would otherwise have probably done. In the result, then, State governmental activity as represented by the Licensing Act so operated under the circumstances as to put a damper upon recruiting; whilst certain Federal governmental activities were simultaneously being directed towards stimulating it in every possible way.

Besides tending to produce collision between various Federal and State governmental activities the present federal form of polity also lends itself, as already said, to the production of more or less duplication of such activities. There are (or it may be in some cases were) Federal and also State duties upon the estates of deceased persons, Federal and also State taxation of incomes, Federal and also State land taxes, Federal and also State Courts of Industrial Arbitration, and Federal and also State Savings Banks—most of which instances have for one reason or another been mentioned before. Furthermore, there are coexisting Federal and State pieces of governmental mechanism for the compilation of electoral rolls, collection of statistics, censorship of films, and grading of butter. In addition there are coexisting professional staffs, Federal and State, for railways and public works. On the side of the States there is little or no uniformity in the mode in which these cases of duplication occur. They are distributed sporadically and so that one State may have many and another comparatively few. But they are not so few in any State as to prevent generalization as to their incidence. The duplication of Federal and State governmental activities prevails in so many cases and in so many directions as to leave no room for doubt as to its being in itself as much a normal by-product of the present federal form of polity as collision between similar activities has already been shown to be. In the apparatus of governmental mechanism as now established in Australia there is thus a pronounced tendency to produce certain distinctive results which work against the attainment of the national well-being and safety. When the nation puts forth its efforts to reach its natural objective it finds that in spite of itself some of those efforts defeat one another, and some of them involve it in wasteful expenditure of energy and money. There are no reliable means of keeping this tendency in check because of the inability of the nation as now constituted to secure the regular performance of the twin processes referred to at the opening of this chapter. Hence the fact that this tendency will out affords a third concrete instance of how the helplessness of the nation in the above respect lowers its survival-value.

Practical experience of the working of the present Federal form of polity thus shows that in three crucial matters—the more effective occupation of the Australian continent in its entirety, the scientific management of the national finances, and the maintenance of unity of policy and unity of action throughout the whole field of governmental operations—the nation has failed to act up to the dictates of its common sense and has ordered its behaviour in such a way as to do itself scanty justice. These miscarriages in all three directions at once might excite wonder if the nation lived under a unitary form of polity. But the existing constitutional system being what it is there is nothing surprising in them. They are the natural consequences of those defects in the average working-capacity of the apparatus of governmental mechanism which have already been explained. They are indeed of special importance from the point of view of logic because they confirm by the method of induction the conclusion arrived at by the method of deduction, and nothing can be surer than a conclusion supported by both methods of reasoning. The existence of the above congenital infirmity in the Australian nation as now constituted is something which may be taken therefore as indisputable. There are no such defects, as has already been shown, in a nation constituted upon the unitary principle. Hence the latent difference existing between a unitary and a federal form of polity in regard to the average working-capacity of the apparatus of governmental mechanism employed is a fact which calls for no further proof.

The other members of the first class of latent differences which remain to be considered in this chapter are not quite on the same lines as the one which has just been dealt with. So far as they are concerned it does not matter what the compass of the average working-capacity of the apparatus of governmental mechanism under either form of polity is, and in proceeding to deal with them it will accordingly be convenient to allow the latent difference just established to drop for the moment out of sight. Of these other latent differences one is in relation to the extent to which certainty can prevail as to the constitutional competency of any particular set of institutional machinery to take legislative or administrative action in any given case. Under a unitary form of polity there never can be the least uncertainty on a matter of that kind. The single set of institutional machinery employed to do the work of government-in-chief is, as already said, the nation's plenipotentiary or factotum, and its sphere of action has no assignable metes or bounds. Being clothed with all imaginable powers it is legally competent to do anything and everything. The individuals who are component parts of it can therefore rest assured that it has lawful authority to take any legislative or administrative action that the occasion may seemingly require. In such a connexion doubt cannot possibly enter the mind of any person of ordinary intelligence. Hence uncertainty on that score can never become operative as a disturbing influence, tending to distract the counsels of those at the head of public affairs. Under the present federal form of polity the matter stands on a footing which is in the main different. Short forms of words have been used in the Constitution to identify the functions entrusted to the Commonwealth. There are no settled rules as to what legislative and administrative actions will come within those phrases as worded. Whether this or that one of them will avail to cover such-and-such a form of legislative or administrative action, if and when taken, must largely depend upon circumstances and involves a question of degree. Though the expressions actually employed are definite enough as regards part of what they connote they are nevertheless potentially indefinite as to the other part. In this respect they may perhaps not inaptly be compared to a comet. In both cases the nucleus is quite distinct. But just as the comet's tail streams away until it grows too faint to be seen clearly, the extreme lengths to which legislative and administrative action can legitimately be pushed, under and by virtue of any of the above functions, become dim and problematical. Hence, as experience proves, events do on occasions so shape themselves as to raise awkward questions touching the legal competency of the Federal authorities to initiate the governmental action which may seem to be required to meet a given case; and if there is a doubt as to their competency it follows as a matter of course that there must be a similar doubt as to the competency of those at the head of affairs in the respective States. The States keep all that is left after the subject-matters committed to the Commonwealth have been severed from the mass; and if there is a doubt as to how much has been severed it is obvious that there must be an equal doubt as to how much has been left. The division—essential to a federal form of polity—of functions of government between the Federal and the State sets of institutional machinery accordingly involves the inherent risk that the words used to effectuate the division may sometimes prove lacking in precision and give rise to doubts; and when things turn out so the doubts affect the management-in-chief of the national affairs. Free play is forthwith given to a natural tendency on the part of the Federal and the State constituted authorities respectively to wait until the legal position has been cleared up before they commit themselves to any definite course of action, and that too although they may be in the presence of circumstances which plainly menace the national interests and brook no delay. Events may possibly move so fast as to compel some of them at last to take a leap in the dark. But as a rule they generally contrive to spin the matter out and to trim and temporize. Hence a federal form of polity has within itself a potential cause of uncertainty which may suddenly come into operation and produce hesitation and procrastination amongst those in high places. The nation as constituted under such a form of polity is therefore predisposed to suffer at intervals and for a while from a partial paralysis of its normal powers of action. It is hardly necessary to observe that the High Court of Australia provides the nation with no safeguard against its liability to be so reduced to helplessness for the time being. That tribunal has jurisdiction to intervene in cases where something has been done which from the point of view of the Constitution ought not to have been done. It cannot act in cases where something which from the point of view of the national interests ought to have been done has been left undone or trifled with. Under a unitary form of polity, as already shown, the managers-in-chief of public affairs can always apply themselves to the tasks awaiting them with the confidence born of sure knowledge as to what the main legal position is. Under a federal form of polity, as now appears, sometimes they cannot do so. In that respect, then, there is a latent difference between the two forms of polity.

Another inherent risk incidental to the division of functions of government between Federal and State sets of institutional machinery is that the division when made may, in the events which afterwards happen, prove to have been faulty. Such a division, if it is to work well, must rest upon an intelligent anticipation of what is in the future; and unless the authors of the division have in a measure risen above themselves and acted as if inspired, practical experience must in course of time disclose blemishes in what they have done. That being so from the nature of things, it will only be necessary to adduce a single instance where a mistake of this kind has obviously been made in the Commonwealth of Australia Constitution Act; and the instance chosen will abundantly illustrate how grave the consequences of such a mistake may be. In the Constitution as it now stands, the regulation of trade unions is not one of the specific subject-matters of governmental activity assigned to the Commonwealth. The States therefore remain the depositaries of the power to take the legislative or administrative action which may be required in that connexion. Before Federation the statute-books of the several colonies, or rather such of them as had dealt with the matter, contained enactments which, having been modelled upon British precedents, were on more or less uniform lines. There was no apparent reason, therefore, why the function of regulating trade unions should not have been transferred to the Commonwealth from the outset. On the contrary, there was a strong reason why it should. For some years before Federation trade unions which in the several colonies were respectively concerned with similar occupations had been drawing closer together and framing plans for concerted action in defence of their mutual interests. Though the movement already evidenced itself clearly enough, it was as yet but in its early stages. Since Federation it has made great headway. In 1926 there were 43 inter-state or federated unions operating in all six States and having between them 341,061 members. In addition there were 111 trade unions operating in from two to five States and having between them 711,790 members. The movement towards consolidation has in fact gone so far as to lead to the mooting of a project—though it has hitherto fallen flat—for the combination of all trade unionists in Australia into one big union. Thus, in the midst of the nation there now exist vast and formidable associations each of which is bent upon the pursuit of its own sectional interests and all of which are more or less capable of making common cause and acting together in mass. The principle of preference to unionists, which as a rule prevails throughout Australia in regard to most forms of manual labour, has placed the trade unions in a privileged position; and it is an axiom of political science that where there is a privilege there is also a right in the general community to regulate and limit the exercise of that privilege. Quite apart from that, moreover, many years' experience has now been gained as to the working of the trade union system; and in the light of that experience there can be little or no doubt that the time has come to make better statutory provision for the internal government of trade unions, so that they may be kept more true in spirit to the purposes for which they purport to exist. Right and reason are therefore both on the side of those who favour the passing of fresh legislation in the matter. For reasons which have already been given, it is hopeless to expect that all six State Parliaments could attain to such unity of policy and unity of action as are needed to turn the lessons of experience to profitable account. The only agency through which the nation could take effectual steps to protect itself against abuses to which the working of the trade union system is now seen to be liable must under the circumstances be the Commonwealth. But the power is not to hand when needed, being deposited elsewhere. The logic of events has thus proved that a mistake was made when in the distribution of functions for the purposes of the present federal form of polity the States were left in possession of the power to take such legislative and administrative action as might become advisable for the regulation of trade unions. That mistake has cost the country dear. The trade union system has shown itself particularly liable to be abused in the case of unions such as those, amongst others, of the seamen, the marine stewards, and the marine cooks, which are all organized so as to operate throughout the whole Commonwealth. The members of those unions, being away for most of the time from their home ports, have little opportunity of taking an active part in the internal affairs of their unions, and their officials have thus been in a position to pursue any line of policy that they chose. For years past there have been in consequence recurring strikes in the Australian shipping industry. If the seamen are not called out, the stewards or the cooks are. In the result there is almost every year a more or less general hold-up of shipping in the main ports of the Commonwealth. Business arrangements are dislocated, the products of rural industries cannot reach their markets, and in many other respects loss and misery are spread abroad over a nation-wide area. It may be suggested that there are appointed means of altering the present Constitution, and that therefore the above mistake is not beyond repair. But there is a stumbling-block in the way. There is a marked disinclination on the part of the general public to entrust the Federal Parliament, as it now is, with any more power. A change in the direction of setting up a National Parliament which would work under the set of conditions typical of a unitary form of polity would probably be welcomed throughout the whole Commonwealth. But as for widening the sphere of action of a Parliament working under the set of conditions typical of a federal form of polity, experience teaches the prevalence of a general sense that things had better remain as they are. Assuming, however, that the above mistake were actually corrected, the correction could not operate retrospectively or get rid of the consequences which up to the time of correction the nation had been forced to endure. The matter under consideration accordingly offers a good illustration of the risks which the nation, as now constituted, runs and must always run. If it has found itself short of power to act in one direction, as it undoubtedly has, it is equally possible that it may find itself short of power to act in other directions also. Time only can tell. The present federal form of polity thus subjects the nation to a liability to suffer damage because needed power is not placed where the circumstances prove that it ought to be, but has been mislaid; and from the nature of the case that liability must be unlimited. A unitary form of polity exposes a nation to no such liability.

All imaginable powers are deposited in one and the same place, and that the right one, and none of them can be missing when wanted for exercise. In this respect, then, there is a latent difference between the two forms of polity.

Under a unitary form of polity the final end and aim towards which the single set of institutional machinery is required to direct its actions is fixed and defined by the nature of things. The nation is, as already said, impelled by the law of its being to strive for the attainment of its own welfare and safety; and the purpose for which the single set of institutional machinery exists is to serve as an agency whereby the nation may put forth its efforts to reach the goal of its existence. It is self-evident that the object which all governmental operations have to keep in view must be predetermined by and coincident with the nation's natural objective. Hence it arises that those living under a unitary form of polity know as if by intuition what is the mark at which all the operations of the single set of institutional machinery ought to be aimed. As a matter of course they can identify it at once as being no other than the attainment of the national well-being and safety. Moreover, the nature of that mark makes it so stand out before the mind's eye that no one can well miss seeing it distinctly. Every one is qualified to form for himself a good idea in the rough as to what the national well-being and safety consist in. Those concepts are such as to leave sharp-cut impressions of themselves upon the intellect, and therefore the mark or target shows up with clearness of definition. Under a unitary form of polity the true object of all the operations of the single set of institutional machinery is something which propounds itself and interprets itself. That being so, the fact has important consequences. If a rifleman is shooting in a good light the visibility of his target helps him to shoot straight. If a man travelling across country comes within sight of the locality he is making for, the actual seeing of it steadies him and saves him from making detours. The distinctness with which the object of all governmental operations on the part of the single set of institutional machinery can be perceived is in like fashion helpful of itself towards the attainment of that object. Those at the head of affairs can know exactly what they have to do; and common experience bears witness that if anything is to be done in the right way nothing is more essential than a full grasp from the start of what precisely is to be done. The matter goes somewhat farther than that. The perfect visibility of the object in view tends to lead to the development amongst the powers-that-be of what, on the authority of the great Lord Chatham, may be described as sagacity. By dint of practice and acquired skill, the rifleman when once he has found the bull's eye can hit it again and again. A practised bushman can become possessed of a sense of locality which tells him what is the general direction in which he ought to head. In an analogous fashion those at the head of affairs can pick up the knack of knowing as if by instinct in any given set of circumstances what are the right means to adopt towards the attainment of the national well-being and safety. The mark at which all governmental operations ought to be aimed stands out with the same clearness of definition as that possessed by the nation's natural objective, and for that reason it can exert a steadying influence upon all taking an active part in the management-in-chief of public affairs. Knowing full well within themselves what in principle is required of them, their efforts in practice are the less liable to be badly aimed. Hence, under a unitary form of polity the object which the single system of governmental activities ought always to keep trying for shows up distinctly enough to be by itself of some avail as a safeguard against misdirected policy.

However a social organism may be constituted, the law of its being is by inherent necessity invariable. Whether the Australian nation be organized upon the unitary or the federal principle of social organization matters not one whit so far as regards its natural objective. The duty which it owes to itself must ever be to pursue its own well-being and safety; and the only reason for the existence of the seven sets of institutional machinery which are now at work in Australia is to provide the nation with ostensible means of prosecuting that pursuit. So much being clear the idea suggests itself almost inevitably that each of the seven sets must have a separate mission of its own in regard to what is the common object of them all—a mission capable of being summed up in some neat and self-explaining formula. But, as will more fully appear in the next chapter, no formula can be found which will state that separate mission in terms leaving a distinct impression upon the mind as to the exact relation obtaining between the attainment of the national well-being and safety and the mission which each set of institutional machinery as taken by itself is to discharge. The reason why every such formula must lack precision is not far to seek. The actions of the seven sets of institutional machinery are independent for all purposes except one—and that the most important of all. For the purpose of attaining the national well-being and safety their actions are interdependent; and that being so, no more precise statement can be made about the separate mission of each particular set of institutional machinery than to express it as consisting (say) in doing the *n*th part of what is necessary in order that the national well-being and safety may be attained. There would be only one thing clear about that *n*. It could not stand for the whole attainment of the national well-being and safety because each of the sets of institutional machinery contributes towards that. In other respects the value of the *n* must remain an unknown quantity. No amount of hard thinking can elicit definiteness in a case where, as here, the elements of definiteness are wanting; and therefore when it becomes essential to determine the object which for the sake of the national well-being and safety each particular set of institutional machinery ought always to keep in view and guide itself by, men find themselves nonplussed and quite at a loss as to what to make of the matter. The visibility of the mark at which any given set is bound to aim is in fact far less in comparison than that of a disappearing target bouncing about in a mist.

In the result, the principle—accepted as generally sound in the science of the law—that things non-apparent and things non-existent are of the same account is brought into operation. As the exact relation between the separate aim of each of the sets and the nation's natural objective is non-apparent it is in practice treated as if it were non-existent. The idea that every governmental action ought to be adjusted so as to further the attainment somehow or other of the national well-being and safety thereupon grows weaker and exerts little or no effective pressure upon men's minds. In every sphere of action, whether Federal or State, it lacks the forcefulness needed to make itself prevail. Those at the head of affairs in the respective spheres of action are thus left free to proceed without regard to the ulterior bearings of their actions upon the national well-being and safety. Other and more immediate objects engross their attention, and they do not feel called upon to concern themselves about the remoter consequences of their actions. It is no doubt quite possible that governmental operations undertaken under such conditions may eventually make for the attainment of the national well-being and safety. But whenever such a result supervenes it will have been due to good luck rather than to good management. The objectives of all the individual sets fail to assume the clearness of definition with which the nation's natural objective always stands out, and for that reason they exert no steadying influence upon those in charge of operations. Those who in each sphere of action control the management-in-chief of public affairs can only have vague ideas as to what in principle is required of them, and therefore so far as regards the attainment of the national well-being and safety their efforts in practice are the more likely to be badly directed. Hence, under a federal form of polity the objects which the respective systems of governmental activities ought always to keep trying for do not show up distinctly enough to be by themselves of any avail as safeguards against misdirected policy. Under a unitary form of polity the opposite has already been shown to be the case. In this respect, then, there is a latent difference between the two forms of polity.

No constitutional system can produce good government unless it offers adequate facilities for executing as well as originating the measures of policy that are from time to time required; and any comparison between a unitary and a federal form of polity for the purposes of this chapter must lack completeness unless it takes due account of the comparative facilities which the two forms of polity offer for carrying into execution matters as to which the sovereign will of the nation has once been formally expressed. To this end two of the latent differences mentioned above, in relation to the divergent effects produced upon the minds of those who govern, have now to be further considered in relation to the effects produced upon the minds of those who are governed. Under a unitary form of polity every legislative or administrative action taken by the single set of institutional machinery is, as already shown, of unquestionable validity. Hence, if as a result of any such action duties or liabilities are imposed upon a given individual, he finds himself placed in a position in which he must either submit to them or else abide by the consequences of defying the law. Supposing there were within the nation any constituted authority having jurisdiction to review the legislative or administrative action in question, he might perhaps hope to find a loop-hole of escape. If he could set such a constituted authority in motion by appealing to it the action in question might possibly be pronounced invalid. But, there being no such jurisdiction to invoke, he is left to make a direct choice between the only alternatives open to him; and as a rule dread of the consequences of defying the law exerts enough pressure on his mind to ensure his submission and to force him to hold himself bound by what has been duly required of him. Accordingly, there tends to be so little resistance to valid acts of government that the course of administration may run smoothly. Under a federal form of polity, on the other hand, the validity of every legislative or administrative proceeding in any sphere of action must always, at least in theory, be open to question. Each proceeding is subject to review—and, upon cause shown, to invalidation—by the High Court of Australia, the authority clothed with jurisdiction for the purpose. The existence of such a jurisdiction, indeed, can in nowise be dispensed with under a federal form of polity but by the very fact of existing it creates cumulative difficulties for the managers-in-chief of public affairs. One result is that there are a number of subject-matters in connexion with which governmental operations are liable to be brought to a standstill pending the High Court's decision as to the validity or otherwise of some legislative or administrative action which has been challenged. A person whose interests are affected by some specific action is entitled to raise and litigate the question whether it is reconcilable with the Constitution or not; and until the High Court has adjudicated, those who have ventured upon that action are compelled in the ordinary course of things to stay their hands. Another result is to lend colour to the suggestion that statutory enactments, whether Federal or State, are divisible into two classes—those which are valid and those which are not. Amongst the enactments which in the ordinary course of events will be passed and promulgated in any sphere of action it is quite possible that some will be found upon examination by the High Court to have been void from the beginning, and yet in form and semblance the spurious and the genuine laws will have been so completely identical that the public will have been without the means of distinguishing by its own unaided resources the one from the other. When counterfeit paper-money is in circulation there is a general tendency to regard genuine notes with as much suspicion as those which are spurious; and in a somewhat similar fashion the emission of invalid statutory enactments must react upon and detract from the full faith and credit due to those which are valid. Such a state of things cannot exist without unsettling the popular conception of law as being something which without any questions being asked must be unreservedly obeyed; and as this traditional view of the binding force of everything which goes by the name of law is broken down by the logic of events, the law as an integral system imposing restraints upon personal conduct must tend to inspire less awe and in consequence to have a weaker hold upon the behaviour of men in the mass. In the result there is good ground for anticipating a decline in the law-abiding habits of the bulk of the population; and because of that presumable decline the Government in each sphere of action must find itself beset by ever-growing difficulties in securing the due observance of the laws.

The other latent difference needing further consideration in this connexion is that which turns upon the distinctness or otherwise of the object which a system of governmental activities ought to have in view. Under a unitary form of polity the identity of that object with the attainment of the national well-being and safety is self-evident, and the certainty which thus obtains on that score tends to spread abroad a general impression that if those composing the single set of institutional machinery do their parts in relation to the attainment of the national well-being and safety all others concerned ought to do theirs. Hence in the ordinary course of things a force—the sense of duty towards the nation—can be set working amongst the public at large, and in virtue of the action of that force a Government which makes itself respected can as a rule count upon the unbought services of such members of the public as chance to be in a position to render it casual aid. Those who have evidence to give or information to impart or suggestions to offer are usually ready to come forward to help the Government to fulfil its administrative tasks satisfactorily. This supply of voluntary assistance is no doubt liable to fall off when disputes as to what line of policy the Government ought to pursue divide the nation against itself. But when the question at issue has been settled and the will of the nation has taken shape and has been authoritatively expressed, the normal tendency to back up any Government appearing worthy of support reasserts itself afresh, and there is a renewed tendency on the part of the public to contribute to the success of the measures of policy adopted. Under a unitary form of polity, then, Governments are not necessarily restricted to those elements of strength which are commonly derivable from the judicious exercise of the powers to reward and punish. Yet a third element can accrue to a Government possessing public confidence. Such a Government can strengthen its own hands by instilling amongst ordinary citizens a sense of duty towards the nation; and when the above three elements of strength are all available to reinforce one another, the powers-that-be command the best facilities that are attainable in practice for executing with energy whatsoever they may have taken in hand in the course of their management-in-chief of public affairs. Under a federal form of polity, which, as will be explained in the next chapter, sets up no integrating process of its own, the sense of duty towards the nation is not likely (other things being equal) to be so strongly felt as it would be under a unitary form of polity. But for the moment the potential disparity in that respect need not be taken into account. What is of chief importance for the purposes of this comparison is that under a federal form of polity those affected by the way a particular set of institutional machinery does its work have no means of gaining a clear idea of the exact relation between the object which that set ought to work for by itself and the attainment of the national well-being and safety. Hence there is nothing to demonstrate that the national fortunes are staked upon the success of the system of governmental activities prevailing in any sphere of action whatsoever, whether Federal or State; and therefore it need not, and for the most part does not, strike those whose lives may be affected by any such system that for the sake of the national interests they are bound to put forth any special efforts in order to contribute to its success. In such a state of things the sense of duty towards the nation normally remains inert; and as a rule the general tendency of the public at large is to hold itself aloof and to leave the Government in each sphere of action to do the best that it can with its own unaided resources. To that rule, however, there are exceptions which go far towards proving the rule. In certain cases—of which the waging of war may be taken as a typical example—where governmental operations have in view some limited and special object which can be seen at a glance to be a step towards the attainment of the national well-being and safety, the naked simplicity of the situation can, so to speak, switch on the sense of duty towards the nation and start that force into temporary activity; and thereupon the Government gains added strength by having at its command for the time being the unbought services of those who are prepared to lend it a willing hand. But as soon as the occasion has passed, this tendency to proffer voluntary assistance to a Government dies down and things fall back into their ordinary course. Apart from certain exceptional cases the usual attitude of men in the mass towards the operations of government in each sphere of action is to view them as the exclusive concern of those who are paid to look after them, and not to recognize any collateral obligation as resting upon themselves in that regard. Under a federal form of polity a Government, however deserving when, engaged in the common tasks of administration—such for example as maintaining order—has little or no chance of drawing unto itself that supplementary element of strength which consists in the active but voluntary co-operation of the public at large.

From the point of view of the facilities which each offers for carrying into execution matters as to which the sovereign will of the nation has once been duly expressed, a comparison between a unitary and a federal form of polity may be made as follows:

Under a unitary form of polity the administrative difficulties to be overcome are less whilst the available strength to overcome them can be more; under a federal form of polity the difficulties to be overcome are more whilst the available strength to overcome them is less. How far Governments under a federal form of polity can fall short of having strength sufficient for their needs is illustrated by the inability of the powers-that-be in the United States to fulfil the elementary duty of vindicating the supremacy of the law. 'Crime and lawlessness in the United States', affirmed the American Bar Association in 1922, 'have been steadily on the increase and out of proportion to our growth and there has been a steady and growing disrespect for the law. . . . The natives of certain European countries which have the best record for law observance when settled here become the most lawless of all.' The nation-wide incidence of this social phenomenon points to the federal form of polity—a factor equally wide in its operation—as being presumably the prime cause. But the possibility of other causes being at work cannot be excluded or ignored; and it is therefore not safe to go farther than to say that the general prevalence of lawlessness in the United States is what was to be expected in view of the results of the comparison between a unitary and a federal form of polity which has just been made. Other things being equal, the normal facilities for carrying measures of government into energetic execution are less under a federal than under a unitary constitutional system. Hence in this respect there is a latent difference between the two forms of polity.

A favourite mode of summarizing the distinctions between a federal and a unitary constitution is to say that the sovereignty is divided under the former and not divided under the latter. But the conclusions reached in this chapter leave no room for doubt as to the faultiness of the above antithesis as involving the suggestion that sovereignty when divided is commensurate with and equivalent to sovereignty when undivided. It also suggests that sovereignty when divided can be exercised as perfectly as sovereignty when undivided. Neither suggestion is well founded. To regulate all legislative and administrative actions by reference to the exigencies of the nation's situation in its entirety is to exercise a function of sovereignty. To co-ordinate all such actions so as to make of them a coherent whole is to exercise another function of sovereignty. Both these functions of sovereignty come within the average working-capacity of the apparatus of governmental mechanism when the sovereignty is undivided. Neither of them does so when the sovereignty is divided. Hence, so far as both these functions are concerned, the sovereignty when and as divided is, if not destroyed, at any rate practically placed in abeyance. Moreover, as regards all other functions of sovereignty exclusive of these two, the apparatus of governmental mechanism at its best can do its work in such a way as to achieve good government in the case of the sovereignty being undivided. But in the other case, the work which the apparatus of governmental mechanism at its best can do is liable to be so marred by various imperfections as to put good government out of the question. It thus becomes evident that sovereignty when and as divided counts for less than its undivided self. It shrinks as to its contents and to an appreciable degree is also a less sure producer of results. The above-quoted formula involves the implication that the only difference between divided and undivided sovereignty is that the former is and the latter is not done up in little packets. The difference, it now appears, goes a good deal farther than that. Error lurks in the formula, therefore—error which can easily lead to unsuspected fallacies in reasoning.

CHAPTER III

THE EFFECTS OF FEDERALISM UPON THE MENTAL PROCESSES OF THE INDIVIDUAL

THE objective imposed upon a nation by the law of its being—that is, to repeat what has already been said, the attainment of its own welfare and safety—is something which stands out with clearness of definition; and that being so, the purpose, for which under a unitary form of polity the single set of institutional machinery exists, has the like definiteness. As that piece of governmental mechanism is bound to fulfil the purpose of its existence, it becomes clear that the attainment of the national well-being and safety is its paramount duty. Hence, under a unitary form of polity the duty of the single set of institutional machinery can be stated in terms sufficiently definite to satisfy the requirements of formal logic, and for that reason it can serve as a valid premiss to the process of arguing from it to demonstration. Thence follow of necessity certain conclusions as to what is right and what is wrong in the domain of government. As the single set of institutional machinery is under a paramount duty in regard to the attainment of the national well-being and safety, anything done or left undone by it which is tantamount to a part performance of that duty must be right, and anything done or left undone by it which amounts to a neglect of that duty must be wrong. Such conclusions carry conviction with them because of the validity of the premiss upon which they hinge. The definiteness of the duty of the single set of institutional machinery thus has the effect of bringing the force of logic into action in regard to the above matters. Those living under a unitary form of polity are regularly exposed to the impacts of that force; and day in, day out, it suggests to them that the rightness or wrongness of a given governmental act of commission or omission can only depend upon its bearing upon the attainment of the national well-being and safety.

Thus in the ordinary course of things people develop a feeling of certainty upon the point, and no person of normal intelligence need ever be at a loss as to what to think about it. Hence, one amongst other constant conditions amidst which those living under a unitary form of polity do their thinking, feeling, and acting is that the principle upon which to distinguish the rightness or wrongness of a given governmental act of commission or omission follows as a necessary consequence from the form of polity itself.

Under the present federal form of polity the precision with which the nation's natural objective can be stated communicates itself to the statement of the joint duty of all seven sets of institutional machinery together; and that joint duty can accordingly be stated in terms sufficiently definite to satisfy the requirements of formal logic. As the formula to express that joint duty has the definiteness required, it can serve as a valid premiss from which to deduce the proper principle for ascertaining the true complexion of the combined effects of the concurrent workings of all seven sets of institutional machinery. In principle, that complexion must obviously depend upon the bearing which those effects regarded as a whole have upon the attainment of the national well-being and safety. If those combined effects in their entirety amount to a full performance of the above joint duty they obviously must be pronounced right. If they fall short of the full performance of that duty they must as obviously be more or less wrong. Hence, under the present federal form of polity the definiteness of the joint duty of all seven sets of institutional machinery and the consequent validity as a premiss of the formula expressive of that joint duty lead to the result that those living under the form of polity can feel sure of the proper way to address themselves to one broad question—the question, that is to say, whether upon the whole the state of things produced by the workings of the form of polity makes for or tells against the attainment of the national well-being and safety. The force of logic is therefore available to show people how to start reasoning on that one question. But from the joint duty of all seven sets of institutional machinery nothing can be deduced which will help people to get clear ideas as to how they ought to proceed when they have to make up their minds on the various questions that the course of Federal or State politics regularly presents for their decision. In cases of that sort the matter for decision is as to the rightness or wrongness of some specific act of commission or omission on the part of some one of them in particular, and it is not self-evident what bearing the joint duty of all seven must have upon the solution of the matter so brought up. In such a connexion the duty in question is the separate duty of the particular set of institutional machinery from which the act under consideration came. If in such cases those concerned are to feel themselves bound to apply any fixed principle of distinction when they are thinking out what view they ought to take of the act submitted to their judgements, it is evident that that principle cannot be deduced from anything else than the separate duty of the particular set of institutional machinery whose act they have in mind; and it is further evident that from the separate duty of that particular set of institutional machinery nothing can be deduced which will carry conviction with it unless some formula can be found to express that separate duty in terms sufficiently definite to satisfy the requirements of formal logic. By the exercise of ingenuity various formulas might be suggested, which purport to express that separate duty with the precision required to give it validity as a premiss. It will be worth while to examine two of them as samples of the rest. A favourite way of expressing the separate duty of each set of institutional machinery is to say that each of them ought to do its share towards the attainment of the national well-being and safety. But there are no lines of demarcation to show where one of such shares ends and another of them begins. Each share is in the language of the law an undivided share and therefore it cannot be conceived of as existing in severance from the others. To give this formula validity as a premiss it would be necessary that each of the shares referred to should be, so to speak, self-contained and complete within itself; and the individuality of no share goes so far as that. The terms, then, in which this formula describes the separate duty of each set of institutional machinery prove, when construed in the light of surrounding circumstances, to be lacking in definiteness. Another formula which might be suggested is to the effect that the separate duty of each set of institutional machinery consists in producing such results as when combined with the results produced by the rest of the sets will ensure the attainment of the national well-being and safety. The previous formula sought to describe the separate duty of each set in terms of the end for the sake of which the form of polity exists. This second formula seeks to describe that separate duty in terms of the means to be adopted for the attainment of that end, and those means are represented as consisting in giving to the entire results worked out by the seven systems of governmental activities such a form and shape as will enable them to make together the sort of combination required to fulfil the purpose in view. From the nature of the case the contribution due from each set must depend upon the contributions to be furnished by the other sets, and there is nothing to show what the latter contributions are to be. What each set is to contribute towards the sort of combination desired is thus just as indefinite as the share of each set as referred to in the previous formula. Hence this formula, too, is quite lacking in precision. There is a reason—it was stated in the preceding chapter—why both the above formulas (and indeed any others that might be suggested in their stead) must be found wanting when brought to the test. For the purpose of attaining the national well-being and safety the actions of all seven sets of institutional machinery are interdependent. Hence no formula to express the separate duty of any one set in regard to the common object of them all can be invented which will express it in such terms as will stand criticism from the point of view of formal logic. As already said, definiteness of statement is attainable as to the joint duty of all seven sets but not as to the separate duty of any one of them. That being so, the separate duty of each set of institutional machinery cannot be utilized as a premiss for proving anything. There are therefore no means of deducing from it what is the proper principle of distinction to apply for the purpose of arriving at a reasoned conclusion as to the true complexion of any specific governmental act of commission or omission. That matter remains wholly at large under the present federal form of polity, which does not of itself offer those living under it any means of identifying the point upon which their judgements for or against any such governmental act ought to turn. Any such act may conceivably have many different aspects, some attracting, some repelling. But the present federal form of polity does not indicate whether any, and if so which, of those aspects is the decisive one; and those living under it are left to their own doubts upon the matter—doubts which are only to be resolved by the intervention of their personal equations and not by the exercise of their reasoning faculties. Hence, one amongst other constant conditions amidst which those living under the present federal form of polity do their thinking, feeling, and acting, is that the principle upon which to distinguish the rightness or wrongness of a given governmental act of commission or omission does not follow as a necessary consequence from the form of polity itself. It has already been shown that under a unitary form of polity an opposite condition prevails. In this respect, then, there is a latent difference between the two forms of polity.

Under a unitary form of polity the whole state of the nation is made what it is by the workings—as conditioned by surrounding circumstances—of a single system of governmental activities. No act, whether of commission or omission, in the management of public affairs can ever occur without modifying somewhat the state of the nation and without imprinting thereon a characteristic mark or token of itself. The whole state of the nation thus serves as an object-lesson exemplifying how the business of government has in general been conducted, and it faithfully records in some form or other the sum of the results of everything done or left undone on the part of those at the head of affairs. For this reason, in the course of the struggles between political parties in Great Britain during the eighteenth century, a motion to the effect that the British House of Commons should resolve itself into a Committee of the whole House to consider of the state of the nation was a matter of use and wont. Under cover of such a motion the whole system of governmental activities became open to review, and the most could be made of every misfeasance or non-feasance that could plausibly be imputed to the Ministry of the day. The state of the nation may accordingly be regarded as a sort of repository wherein are stored up the potential data for determining the real bearing of each and every governmental act of commission or omission upon the attainment of the national well-being and safety. But before those data can be rendered available for use they need to be sifted out from the mass of facts which go to make up the state of the nation; and for that purpose it is necessary as often as occasion may require to establish the causal connexion between individual governmental acts of commission or omission and their proper effects as reflected in the state of the nation. Under a unitary form of polity the inquiry for the purpose of identifying those effects has definite limits to it. If any fact in the state of the nation is of governmental origin, that is to say, if it is a consequence of the mode in which the national affairs have been conducted, there is about that fact one thing which is perfectly clear. It must be the result of something done or left undone by the one supreme set of institutional machinery; it must be causally connected with the single system of governmental activities. The paternity of every such fact, then, is certain, so far at least as regards the system of governmental activities to which it must be referred. Hence any such fact for what it is worth can be taken into account without preliminary investigation as to the system of governmental activities to which it owes its origin. Nor is there any need to have regard to the possibility that any such fact may be a joint product of two or more systems of governmental activities and be referable in part to one and in part to other of them. Questions of that nature are alien to a unitary form of polity; and therefore those living thereunder can without embarking on any inquiry on lines such as the above take and use facts as they find them. If the national affairs have been so conducted as to produce any change in the state of the nation people know of themselves where to look for the original source of the governmental act or acts of commission or omission to which it must have been due. To that extent, then, a unitary form of polity simplifies the task of ascertaining how any such governmental act has affected the state of the nation; and the mental effort needed for a proper performance of the task is thereby brought within the compass of the reasoning faculties of persons of normal intelligence. In a limited number of cases—as, for example, where a new departure in some one branch of policy has been followed by a corresponding change in the state of the nation—absolute certainty as to the causation of the change may be attainable. But in most cases the process of identifying the results wrought out by individual governmental acts cannot do more than lead to conclusions resting merely upon the balance of probabilities. Nothing, however, turns upon that, because there are many departments of human activity in which those concerned are forced to base their conduct on probabilities rather than certainties, and common sense warrants their doing so. Under a unitary form of polity, then, the state of the nation is a record which can be deciphered; and a patient study of that record will enable any person of normal intelligence to trace out the train of effects which any specific governmental act of commission or omission has produced upon the state of the nation. A view of those effects will reveal what they are in sum and substance, and from that he may judge what bearing the act in question has so far had upon the attainment of the national well-being and safety. In many if not in most cases there will be difficulties to be overcome in the execution of such a mental process as the above. Social phenomena are usually intricate and complex, and it may prove a nice matter to fit all the blocks of the puzzle into their proper places. These difficulties of execution, however, do not render the mental process any the less efficacious in itself. They only call for the more care and caution in executing it. The mental effort necessary to ascertain the bearing which any specific governmental act of commission or omission has had upon the attainment of the national well-being and safety is therefore one which under a unitary form of polity does not impose too severe a strain upon the human understanding. Those living under such a form of polity accordingly command the means of ascertaining what that bearing has been in the case of each and every thing done or left undone by the single set of institutional machinery; and if the mental effort is not made prematurely that bearing can be ascertained with sufficient accuracy for practical purposes. Hence, one amongst other constant conditions amidst which those living under a unitary form of polity do their thinking, feeling, and acting, is that they can find out in due course how a given governmental act of commission or omission has affected the attainment of the national well-being and safety.

Under the present federal form of polity the state of the nation is made what it is by the workings—as conditioned by surrounding circumstances—of seven systems of governmental activities, matters being ordered so that every State is subject to the operations of two out of the seven systems. Of those two the Federal system covers all the States, but the State system does not extend beyond the territorial limits of the State. Where two independent systems of governmental activities are at work within one and the same local area for the purpose of dealing with affairs of one and the same nation, the operations of neither system are likely to take effect upon the state of the nation as freely as if there were only one such system at work. There is an antecedent probability that trains of effects owing their origin on the one side to Federal and on the other side to State governmental actions will to an appreciable extent interact and influence one another. Instances of collisions and duplications already cited in a previous chapter sufficiently bear out this view of what must on occasions happen. It is accordingly safe to presume that in the ordinary course of things the present federal form of polity must lead to casual interactions between some of the respective lines of Federal and State governmental activities and consequent modification of their individual results. Whenever any such interactions happen, however accidentally, to occur, they obviously will leave their impression upon the state of the nation. For example, if two or more Federal and State activities chance to clash, it will be the after-effects supervening upon the collision that will impinge upon the state of the nation and modify it. Or if there be duplication of Federal and State activities it will be their cumulative results that will take effect upon the state of the nation and there hatch out their brood of consequences. To some extent, then, interaction between the trains of effects set in motion by Federal and State governmental activities is not only a normal incident of the present federal form of polity but also an operative cause helping to make the state of the nation what it is. To what extent the state of the nation is by the operation of that cause rendered different from what it otherwise would have been is a matter which can never be definitely known. Even in plain cases of interaction there are no means of instituting a comparison between the state of the nation as it thereupon becomes and the state of the nation as it would have been in the absence of such interaction. Over and above plain cases, there are moreover disputable cases of interaction where there can be no certainty one way or the other whether interaction between Federal and State governmental activities may not have occurred. For both reasons the definite results produced upon the state of the nation by the process of interaction in all its various forms flit out of human ken and defy attempts to seize them. Hence, as a factor helping to make the state of the nation what it is, interaction between Federal and State governmental activities is indeterminate and incapable of being gauged. That being so, the state of the nation becomes for most purposes illegible as a record. If a person starts searching out the real cause of any fact recorded there and supposed to be of governmental origin he finds himself forced to admit that there may be three possible explanations of it. It may be due to some Federal governmental action; or it may be due to some State governmental action; or it may be due to some form of interaction between Federal and State governmental activities. He can, however, never feel sure about such interaction (if any) as may conceivably have occurred, either as to how far it has gone or as to how much effect it has had upon the state of the nation. Thus the possibility that the fact in question has been due to some interaction between Federal and State governmental activities never can be eliminated; and for that reason if for no other his inquiry into the paternity of the fact in question must sooner or later be brought to a dead stop. No mental effort on the part of any one living under the present federal form of polity therefore will enable him duly to establish the causal connexion between any given Federal or State governmental action and its ultimate effects as reflected in the state of the nation. He can trace out the train of effects supervening upon any such action for some of the way. But he cannot trace those effects all the way. As soon as his quest has been pursued up to a certain point the fog descends, the distances are blotted out, and further search is useless. Those living under the present federal form of polity are accordingly denied the means of knowing how in the long run anything done or left undone in the Federal or a State sphere of action has affected the state of the nation. Instead of helping them to see the whole of the truth in regard to an issue of that kind the form of polity virtually puts them into blinkers. And so, because they are conscious that the real bearing of any specific governmental act of commission or omission upon the state of the nation is past finding out, it is natural that they should not exercise themselves about it but should rest satisfied with knowing only such part of the effects of any such act as is easy for them to perceive.

Hence, one amongst other constant conditions amidst which those living under the present federal form of polity do their thinking, feeling and acting, is that it is not open to them to find out in due course how a given governmental act of commission or omission has upon the whole affected the attainment of the national well-being and safety. It has already been shown that under a unitary form of polity an opposite condition prevails. In this respect, then, there is a latent difference between the two forms of polity.

The two elements, whose presence in the psychological environment as existing under a unitary form of polity has already been established, together lead up to the result that under such a form of polity the rightness or wrongness of governmental acts, whether of commission or omission, is something that can be proved. In virtue of the first element any person of ordinary intelligence can see clearly that the rightness or wrongness of all governmental acts of commission or omission can only depend upon their bearings upon the attainment of the national well-being and safety. That renders him capable of formulating general propositions expressing which of such acts must be right and which of them must be wrong. On such points he personally knows enough to be able to state those general propositions in such a way as to make their truth self-evident to him and to others. The major premiss of the form of syllogism appropriate to the circumstances of the case that he may happen to have before him thus can come into his mind almost spontaneously. So much having been done the second of the two elements thereupon comes into action and makes it practicable for him on taking due pains to ascertain what bearing the particular governmental act that engages his attention has had upon the attainment of the national well-being and safety. It is thus quite feasible for those living under a unitary form of polity to frame for themselves both the premisses of the syllogisms which can definitely prove that governmental acts of commission or omission are right or wrong in the true sense of either word. If such acts are to be rightly judged, and if their true complexions are to be duly ascertained, it is obvious that the matter for decision must turn upon their practical effects upon the attainment of the national well-being and safety. Hence the standard to which such acts must be referred is the objective one; and the substantial effect of syllogisms constructed on the lines suggested above is to test the acts by the objective standard and to allow of their being judged accordingly. Those living under a unitary form of polity command the means of trying sooner or later each and every thing done or left undone in matters of government by the objective standard. The proper use of those means in any given case involves the concentration of the attention of all concerned upon one and the same point—the bearing of the act in question upon the attainment of the national well-being and safety—and precludes wandering from that point. Many minds can thus apply themselves in unison to the threshing out of each such question as it arises; and because that is so the correct answer is the more likely to be found. A unitary form of polity thus puts the nation in the way of digesting and assimilating the lessons of experience. Particular instances of governmental acts of commission or omission whose true complexion has been definitely established can be stored up in the national memory until they form a body of precedents available for reference; and in course of time that body of precedents can be made to yield the materials for generalizations as to the essential principles of sound administrative, legislative, or judicial action, and as to the natural laws that govern human society. Such a process as the above being feasible under a unitary form of polity there is nothing to prevent the nation from making the most of all the lessons of its experience, and evolving for itself a system of political ideas and sentiments, home-grown and therefore nicely adjusted to its actual circumstances. In fine, a nation can hardly get the full benefit of its intelligence unless the objective standard is in general and habitual use. Hence, one amongst other constant conditions amidst which those living under a unitary form of polity do their thinking, feeling and acting, is the existence of facilities for judging governmental acts of commission or omission upon the strength of their practical results in relation to the attainment of the national well-being and safety.

Under the present federal form of polity there is, as already shown, a lack of means of knowing how any given governmental act of commission or omission has upon the whole affected the attainment of the national well-being and safety. If any person, however highly gifted, desired to resort to the syllogistic method of reasoning for the purpose of ascertaining whether any such act was really right or wrong, he would find himself unable to verify the truth of the matters requiring to be stated in the minor premiss of the syllogism that he thought of framing. Indeed he might not even reach the stage of seeking his minor premiss. In the psychological environment amidst which he did his thinking, feeling and acting, there would as already shown be an element of uncertainty as to how and why governmental acts of commission or omission are distinguishable into those which are right and those which are wrong; and he might therefore realize the futility of stating a general proposition—intended to serve as the major premiss of his syllogism—in terms which must either lack precision or else fail to command general assent. There and then he might very well let the matter drop. No one living under the present federal form of polity, then, is in a position to make use of the syllogistic method of reasoning for the purpose of proving that any given governmental act of commission or omission is either right or wrong in the true sense of the word. Neither by that nor by any other method is it possible for the mind to gauge any such act by the objective standard. Apart from the moral standard, which is not in question here, the only standards which can be resorted to for testing purposes are subjective ones, and it is the vice of such standards that they lend themselves to the formation of judgements which need not turn upon the consequences of the acts to be judged and that they are a standing invitation to every individual to choose for himself which of such standards he will for the nonce adopt. The present federal form of polity thus makes it easy for those living under it to attach no importance to the ulterior consequences of the governmental measures that they like; and the results of this state of things are manifest, to take one strong instance, in the undiminished popularity of various courses of policy—some of them have been referred to in a previous chapter—which seemingly have helped and are helping to stimulate the drift citywards to the detriment of the nation's survival-value. Hence, one amongst other constant conditions amidst which those living under the present federal form of polity do their thinking, feeling and acting, is the non-existence of facilities for judging governmental acts of commission or omission upon the strength of their practical results in relation to the attainment of the national well-being and safety. It has already been shown that under a unitary form of polity an opposite condition prevails. In this respect, then, there is a latent difference between the two forms of polity.

Under a unitary form of polity the certainty which prevails as to the duty of the single set of institutional machinery in regard to the attainment of the national well-being and safety begets the like certainty as to the relation between the principles upon which the nation's internal affairs ought to be managed and those principles of morals which find utterance through the human conscience. The nation's external affairs, be it noted, stand on a somewhat different footing because in regard to them the principles of morals are not universally recognized as of perfect obligation. For present purposes it is only safe to confine attention to the nation's internal affairs. So far as they are concerned it is evident that the national well-being and safety cannot be attained unless the nation succeeds in holding itself together and in keeping alive the consciousness of its being one. If the requisite cohesion is there all other things may be added to it; if there is loss of cohesion there is a reduction of the nation's vital force. Hence in dealing with all such matters as directly affect the internal structure of the nation—that is to say matters concerned with the regulation either of the relations between the nation's organs of decision and action on the one side and the individuals who compose the social organism on the other, or of the relations in which those individuals stand to one another—the single set of institutional machinery must be careful to refrain from any course of conduct tending to divide the nation against itself; and therefore the principles upon which all such matters are to be dealt with ought not to fall below the moral standards accredited throughout the nation. The principles of morals, indeed, are part and parcel of the natural laws that govern human society as formed up into the national organism, and they can no more be defied with impunity than (say) the law of gravitation. Every governmental act of commission or omission in respect of the nation's internal affairs will, if it violates a principle of morals, meet with its sure and condign punishment in the form amongst others of an impairment of the national cohesion. The duty to attain the national well-being and safety involves, then, a duty to maintain the national cohesion, and the latter duty in its turn involves a duty to conduct the nation's internal affairs in a manner consistent with the principles of morals. Matters standing so, the certainty which prevails under a unitary form of polity as to the paramount duty of the single set of institutional machinery must likewise prevail as to its ancillary duty, that enjoining such systematic ways of dealing with the nation's internal affairs as will satisfy the requirements of morals. Thus certainty as to the existence and nature of this ancillary duty is ever brought home to those living under a unitary form of polity, and the effect of its constant action upon their minds is to develop amongst them a general sense that any course of internal policy that plays fast and loose with moral principles must of necessity be a misdirected one, and in the end prove harmful to the attainment of the national well-being and safety. Such a general sense can work itself up into a force capable at need of exerting pressure upon the trend of governmental activities within the nation's frame. Experience proves, no doubt, that this force in reserve sometimes fails to succeed. But by the very fact of its existence it affords some sort of a guarantee that in the long run practical politics, so far as concerned with internal affairs, will not finally part company with morals nor end by reacting upon them so as to become a solvent of them. Under a unitary form of polity, then, the courses of governmental policy in internal affairs are subject to potential control by moral considerations and in consequence they tend to follow moral lines. Hence, one amongst other constant conditions amidst which those living under a unitary form of polity do their thinking, feeling and acting, is that the genius of the form of polity is in favour of ascribing cardinal importance to the moral complexion of governmental acts of commission or omission in connexion with the nation's internal affairs.

Under the present federal form of polity at least two factors work against the influence of moral considerations upon the management of the nation's internal affairs. One is effective because, as already shown, the consequences of anything done or left undone by a particular set of institutional machinery cannot be fully traced until they become reflected in the state of the nation. It may thus happen that the ill effects which must inevitably accrue as the retribution for some breach of the moral law may be swallowed up in the hotchpotch of results from the working of the federal form of polity. In such a case differences of opinion may well arise as to the causation of the very facts which are the retribution for the breach of the moral law. Some interested spectators may father them upon this cause, others upon that; and the true causation of the facts may remain an open question. Certainty as to the causal connexion between a breach of the moral law and its ensuing retribution is, it need hardly be said, an essential element in the power of the moral law to vindicate itself and to drive home the truth that it can never be broken with impunity. If whenever the moral law is broken the causal connexion between the breach and the ills suffered in consequence is perfectly clear, the results of the experiment, if so it may be called, are positive and decisive. Every one who has a clear perception finds himself in the presence of an object-lesson of the inexorableness of moral obligations; and the authority of the moral law is there and then confirmed. If on the other hand whenever the moral law is broken the causal connexion between the breach and the ills suffered in consequence remains problematical, the results of the experiment are negative and indecisive. People may honestly ascribe those ills to anything except the real cause, and be left with the impression that the breach has not, so far as can be seen, produced any untoward after-effects worth mentioning. In such an event the authority of the moral law over their minds must tend to be more or less shaken. In matters of internal government under the present federal form of polity things can work out so as to interfere with the action of the natural sanctions against breaches of the moral law and to weaken the force of the moral law and its hold upon men's minds. By the operation of this first factor, therefore, the necessity of conforming to the principles of morals in the management of the nation's internal affairs is liable to become less and less obvious to those living under the federal form of polity. On top of this factor comes the second, tending to bring the moral complexion of governmental actions under an eclipse. In order that there may be the least possible amount of clashing and collision between the seven independent systems of governmental activity there must be a rigorous enforcement of the principle that nothing done by any set of institutional machinery outside its own sphere of action can be valid. The principle is accordingly embodied in a form of permanence and power in the High Court of Australia. That tribunal stands ever ready to intervene as soon as it is duly given to understand that a set of institutional machinery has anywhere gone beyond its legitimate functions. Before governmental action in any matter can be taken with safety there is thus need to consider on the threshold whether the Parliament concerned has legal competency to deal with such a matter at all, and if in the event the Parliament proceeds to act it thereby virtually affirms its own legal competency. The question as to legal competency which thus raises itself in every case is obviously entitled to precedence over any question as to what sort of action ought to be taken. If there is no legal competency to act, the question as to how the matter ought to be dealt with does not arise and becomes frivolous. Logically, then, the first thing to be considered in connexion with a governmental action is its legal complexion. Its moral complexion is left to be a matter for after-consideration. Moreover, this very moral complexion has not under the circumstances as all-important a bearing upon the maintenance of the national cohesion as it perforce has, as already shown, under a unitary form of polity. The rigidity of the framework within which human society is encased by the federal form of polity affords some sort of a guarantee—imperfect though it be—that so long as the legal restraint upon invalid governmental actions is duly enforced the nation will not suffer disruption. Some of the importance which would otherwise attach to the moral thus becomes transferred to the legal complexion of governmental actions; and that makes it easy for those living under the federal form of polity to get into the way of thinking that the legal complexion of any such action is not only the first but also the main matter to be taken into account by them, and that when they have once satisfied themselves on that point they need not do more nor inquire further. As things are ordered under and by virtue of the federal form of polity, legal considerations tend to grow in importance at the expense of moral considerations so as at the last even to overshadow and mask them. How far this process can go in the mind of the average individual is evidenced by current forms of speech. In reference to matters of government people not only say that such-and-such a Parliament has a right to deal with this or that subject-matter of governmental activity as falling within its appointed sphere of action; they also say that the Parliament has a right to deal with the subject-matter in any way that it pleases; and—when the subject-matter has been so dealt with—they go so far as to say that what has been done or left undone in the course of so dealing with it is right. Such common forms of expression show that those who use them have no mind for anything except the legal complexion of governmental actions, and that in comparison therewith the moral complexion of the actions does not count. The second of the above two factors thus tends to subordinate moral to legal considerations in matters of government. By the joint operation of both factors the force of moral principles in matters of internal government is weakened both absolutely and relatively. In the result, practical politics become free to break away from the controlling influence of morals, and the mere possession of legal power comes to be regarded by men in the mass as a sufficient justification for its being exercised. Hence, one amongst other constant conditions amidst which those living under the present federal form of polity do their thinking, feeling and acting, is that the genius of the form of polity is not in favour of ascribing cardinal importance to the moral complexion of governmental acts of commission or omission in connexion with the nation's internal affairs. It has already been shown that under a unitary form of polity an opposite condition prevails. In this respect, then, there is a latent difference between the two forms of polity.

Under a unitary form of polity the singleness of the system of governmental activities for dealing with all the national affairs has as its practical corollary the singleness of the capacity in which the individual does his thinking, feeling and acting, in regard to matters of government. As he knows of himself his fortunes are bound up with those of the nation, and those of the nation are staked upon the mode in which the single set of institutional machinery does its work. He is therefore moved by his self-regarding instincts to keep watching what goes on within the single system of governmental activities and when anything noteworthy happens therein to think, feel, and act in regard to it in the capacity of a member of the nation. He always remains subject to the influence which prompts him to conduct himself in this way; and in consequence the capacity—that of a member of the nation—in which he thinks, feels, and acts, is one which is continuously in exercise. He may also, it is true, be called upon to think, feel, and act as regards local affairs in the capacity of a resident in a particular locality. But all local government bodies owe, if not their origin, at least their obedience to the single set of institutional machinery, and the results worked out by them form part and parcel of the one whole system of governmental activities. The individual's capacity as a resident within a particular local area is thus founded upon his capacity as a member of the nation, and is merely an adaptation of it to a special purpose. In the ordinary course of events the individual living under a unitary form of polity is constrained by force of circumstances to think, feel, and act as to public affairs in a constant capacity. An opening is thus created for the operation of the force of habit as applied to things of the mind. The character which the individual habitually sustains tends to fix itself upon him and to gain the ascendancy over him and subdue his natural self. The individual thus comes to regard himself as above all a member of the nation, and gets into the way of thinking, feeling, and acting concerning matters of government as they seem to him to affect the national interests. There is nothing abnormal in the occurrence of such a change. Common experience proves that any rôle regularly played by a man is likely to grow upon him, no matter how much at variance it may be with his original disposition. An instance in point is vouched for by a celebrated traveller from Europe who, carrying his life in his hand, long moved about in Central Asia disguised as a dervish. Speaking of the change wrought in himself he says:[1]

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[1] *The Life and Adventures of Arminius Vambéry*, p. 281.

'When a man travels as I did, and when he has as thoroughly and completely adapted himself to the Tartar mode of life, it is no wonder if, in the end, he turns half a Tartar himself. . . . The constant concealment of his real sentiments, the absorbing work of his assimilating to the utmost elements quite foreign, produce their slow and silent but sure effect, in altering the man himself, in course of time, whether he wishes it or no. In vain does the disguised traveller inwardly rebel against the influences and impressions which are wearing away his real self. The impressions of the past lose more and more their hold on him until they fade away, leaving the traveller hopelessly struggling in the toils of his own fiction, and the rôle he had assumed becomes second nature to him.' As compared with such an extreme case there is for the most part much less discrepancy between the capacity in which the average person within a nation must needs do his thinking, feeling, and acting as to matters of government on the one side and his native disposition on the other: and the longer the nation has lived under a unitary form of polity the less the discrepancy is likely to be. In ordinary cases, then, there is comparatively little or nothing of violence in the process which causes the average person living under a unitary form of polity to move in the direction of identifying himself unreservedly with the nation. Moreover, in such cases there is as a rule something else at work besides the mere force of mental habit. The members of the nation are all of one brotherhood, being jointly interested in what goes on within the single system of governmental activities. That helps to create a bond of fellowship between them and makes it easier for them to think, feel, and act together for the purpose of attaining the common objects which they have in view—objects the due pursuit of which involves the pursuers in the necessity of identifying themselves with the nation. How powerfully the combined forces of mental habit and of moral gravitation (if so it may be called) can work in certain cases was illustrated in a way which became familiar to every one during the Great War. The men of a battalion—strangers to one another in the beginning—by dint of thinking, feeling, and acting together in military matters were found in course of time to have so thoroughly merged themselves in the battalion as to belong to it soul as well as body. Instances even occurred where the survivors of a used-up battalion were even ready to mutiny at the very thought of its being disbanded. In such cases the integrating process could and did fulfil itself rapidly. In the case of those living under a unitary form of polity the rate of the integrating process can never be otherwise than comparatively slow. But the view that the form of polity as it works can itself induce such a process is supported by what happened in England within the first century and a half after the unitary principle of social organization had been applied with logical thoroughness. On the eve of the Norman Conquest (A. D. 1066) the population of England was derived from a series of racial deposits—Celtic, Anglo-Saxon, and Danish, to mention the chief of them—left by successive waves of invasion. The Conquest added one element more—the Normans. By the date of Magna Carta (A. D. 1215) the integrating process had proceeded so far that when the barons of England obtained from their sovereign that great acknowledgement of national rights, as Lord Chatham long afterwards called it, they were not content until they had, among other things, secured the legal position of every freeman of the realm. The members of the baronage as superimposed by the Norman Conquest had had at the start little or nothing but religion in common with the rest of the people. What was it that had brought their privileged order to think, feel, and act nationally to the degree which the comprehensiveness of Magna Carta shows? It can hardly have been external pressure, because neither the Welsh nor the Scots had been strong enough to exert continuous influence of that kind. In the main, the forces which carried on the integrating process must have originated within the framework of the nation. Any doubt as to which was the chief of those forces is dissipated as soon as regard is had to the striking contrast between the modifications observable in the atomic structure of the respective social organisms (constituted, as they were upon opposite principles) in England and in the United States—modifications which occurred in each case within the first century and a half of the organism's life-history. In England the direction of evolution was, as the sign-post of Magna Carta shows, towards homogeneity and cohesion. In the United States, as will more fully appear a little farther on, it was in a contrary direction. Accordingly, it is fairly safe to conclude that a unitary form of polity exposes those living under it to the operation of a natural force which is sufficient of itself to give the average individual a predisposition towards making the cause of the nation his own, and towards thinking, feeling, and acting about matters of government as a whole-hearted member of the nation. Such a tendency cannot become evident on a large scale without an effect upon the national mentality and temperament. In consequence, the sentiment of nationality tends to grow active within a nation constituted upon the unitary principle, and gain strength. Hence, one amongst other constant conditions amidst which those living under a unitary form of polity do their thinking, feeling, and acting, is that the form of polity of itself makes for the development in them of national self-consciousness.

Under the present federal form of polity those living under it have, as it is commonly expressed, a double citizenship. Each of them is a member of the Commonwealth. Each of them is quite as much a member of a State. Accordingly, the individual who thinks, feels, and acts concerning matters of government does not always do so in the same capacity. As he watches the course of affairs within the Federal sphere of action he thinks, feels, and acts in regard to them in his capacity as a member of the Commonwealth. When he brings his mind to bear upon things happening within the sphere of action of the particular State to which he belongs, he thinks, feels, and acts in regard to them in his capacity as a member of that State. Both systems of governmental activities—the

Federal and the State—go on concurrently, and therefore he is constrained to divide his attention between them and to alternate as the occasion may require the capacities in which for the nonce he does his thinking, feeling, and acting. Thus he is kept oscillating between his two capacities. Under the circumstances, then, the exercise of neither capacity can proceed continuously and regularly and as a matter of course. That being so, there is no room for the operation of the force of habit as applied to things of the mind. He is not wont to think, feel, and act uniformly and invariably in either of his two capacities, and therefore neither of them can grow upon him and in the end become his second nature. So far as the recurrent exercise of his Federal capacity is concerned it cannot make him a more devoted adherent of the nation than he otherwise would be. Nor can the force of moral gravitation help to work such a transformation in him. Whenever he applies himself to think, feel, and act as to matters of government he finds himself associated sometimes with his fellow members of the Commonwealth and sometimes with his fellow members of the State, the majority of his fellow members of the Commonwealth not being included amongst those who are his fellow members of the State. In the way that he looks at things the two fellowships are quite separate and distinct. His thinking, feeling, and acting in association with either fellowship would in the ordinary course of events tend for the time being to draw him closer to it. But the pull upon him from the one produces no lasting effects because it is countered by the pull upon him from the other. His sympathies accordingly veer to and fro under the influences of attraction and counter-attraction; and in the result he remains balanced between the two fellowships and attaches himself for good and all to neither. Such a result, indeed, is just what the present federal form of polity requires. For the latter's purposes it is essential to maintain a stable equilibrium between the Commonwealth on the one side and the several States on the other; and the constitutional system would begin to rock if a movement of mind carried the bulk of the population over bodily and permanently either to the side of the Commonwealth or to the side of the States. Under such circumstances, the fact that the individual thinks, feels, and acts from time to time as one of the fellowship made up by all the members of the nation is productive only of transitory impressions upon him. In the upshot he cannot rise above the limitations imposed upon him by his double affiliations. To him it is not given as a rule to be more than a half-and-half member both of the Commonwealth and of his State; and his attitude towards each of them must in the ordinary course of things tend to be detached. Thus it appears that those living under the present federal form of polity are not, on that account, urged by forces of mental habit and moral gravitation into developing a sense of self-identification with the nation. As potential factors in the integrating process, if any, those forces remain out of action. Their absence does not, it is true, stop other unifying influences —for instance, the possession of a common moral patrimony, the existence of common interests, the thrust of pressure from outside, and so on—from helping forward so far as they can an integrating process. But in view of what has happened in the United States it may well be doubted whether the presence of all such influences can ever compensate for the absence of the two forces mentioned above. When that country adopted its present federal form of polity, its thirteen original States, as on all hands is agreed, had in them a white population which, being mainly of British descent, was substantially homogeneous. Fresh racial elements—but to no considerable extent—were brought in by subsequent acquisitions of territory from France and Spain. Within less than a century and a half, when the total white population of the country had increased to ninety-five millions, the origin of only fifty-five millions could be traced to Great Britain. To illustrate the vast significance of this fact, it may be added that the Republican manifesto as issued on the eve of the Presidential election of 1920 for circulation throughout the United States made its appearance in forty-three different languages. In the United States, then, a homogeneous population was turned into a heterogeneous one as effectually as in England a heterogeneous population was, as already shown, turned into a homogeneous one: and in the United States this change in the composition of the population occurred notwithstanding that the above-mentioned unifying influences—the possession of a common moral patrimony, the existence of common interests, the thrust of pressure from outside, and the like—were all the time at work. All those influences combined failed to procure the development amongst the public at large of an instinct of nationality vigorous enough to become articulate and assert itself successfully in its own cause and in its own defence. As soon as unrestricted alien immigration had attained proportions threatening danger to the homogeneity of the population, the sense of nationality, had there been any force in it, would naturally have taken the alarm and refused to be pacified until its protests had been translated into adequate legislative and administrative action. The fact that nothing was done in the matter until racial purity had been lost shows that the unifying influences last referred to had not enabled the spirit of nationality to make much headway amongst those living under the federal form of polity; and it is by no means certain that they or any other influences not directly emanating from the constitutional system can ever do much of themselves to make the members of a nation feel themselves really one. Whatever all such extra-constitutional influences may effect in combination it is wholly upon them that the integrating process, if any, under a federal form of polity must depend. They will get no aid from the working of the constitutional system itself. Hence, one amongst other constant conditions amidst which those living under the present federal form of polity do their thinking, feeling, and acting, is that the form of polity does not of itself generate a force making for the development of national self-consciousness in them. It has already been shown that under a unitary form of polity an opposite condition prevails. In this respect, then, there is a latent difference between the two forms of polity.

The main points in which the psychological environment prevailing under a federal form of polity differs from that prevailing under a unitary one having now been identified and viewed, there remains to be considered the question what practical difference they, when all taken together, make or tend to make. Any alteration in the conditions subject to which men in the mass do their thinking, feeling, and acting must of necessity exert some influence in every branch of human activities. But it would be superfluous to enter upon the vast field of speculation which here opens out before the mental vision because, agreeably to what was stated in an earlier chapter, it will be sufficient for present purposes to consider how the aforesaid differences in combination are capable of affecting the working of the system of Responsible Government. Obviously their most direct bearing must be upon the formation of the public opinion which provides motive power for that system, and it is from that angle that their combined effects can most profitably be studied. The general position of those living under a federal form of polity is in two respects less favourable than that of those living under a unitary form of polity to the development of that sort of public opinion which is required if the system of Responsible Government is to justify itself. Both of these have become apparent in the course of this chapter. In that large class of cases where the internal affairs of a nation are involved, there is under a federal form of polity always a risk that the legal complexion of the matter happening to be at issue will loom so large before the eyes of the contributors to public opinion as to thrust its moral complexion into the background and cause it to be ignored. When such a state of things arises, as it is sometimes liable to do, the contributors to public opinion forgo the aid that their moral sense might otherwise have given towards verifying their judgements, which therefore must have nothing to rest upon except the authority of their intellects alone. Under a unitary form of polity the legal complexion of the matter at issue can never present itself in such a way as to overshadow its moral complexion, and in the above class of cases the contributors to public opinion can always take counsel with their consciences, thus getting the benefit of two guides to their judgements instead of one. The second respect in which the general position of those living under a federal form of polity is inferior to that of those living under a unitary one, as regards the soundness of the public opinion that they can help to supply, is that the federal form of polity does not of itself set up any integrating process to move the contributors to public opinion towards the standpoint of the nation, nor impart to them a tendency to put themselves in the nation's place and look at matters arising before them as it were through the nation's spectacles; whereas a unitary form of polity does so. Hence, other things being assumed equal, there is less likelihood in the former than in the latter case that the contributors to public opinion will approach the task of reasoning out their conclusions as if they were microcosms of the nation. In comparison with those living under a unitary form of polity, then, those living under a federal one are at a double disadvantage as potential judges of public affairs. Still greater is the disadvantage under which they labour when engaged in the actual process of using their intellects and working out their judgements—at any rate in cases where the larger issues in the life of the nation are concerned. In such cases they may betake themselves for guidance to some form of subjective standard. Or they may base their conclusions upon what they can observe or forecast of the immediate effects of the matter under their cognizance. And they may repeat either or both methods as often as the occasion may seem to them to require. But what they cannot do is to bring the matter to the test of the objective standard. Accordingly there is a defect in their means of ensuring that their conclusions shall tally with what the nation feels within itself as the practical result of the matter in question, and for that reason their conclusions are liable to go wide of the mark and to be of no real value for the nation's purposes. On the other hand, what the contributors to public opinion can do under a federal form of polity they can likewise do under a unitary one, and they can also do something else besides. They can invoke the aid of the objective standard and in that way dress their roughhewn conclusions into such a shape as to become tantamount to vicarious deliverances by the nation itself, and as such worth the nation's having. Hence, those living under a unitary form of polity as compared man for man with those living under a federal one have in them the making of better judges of public affairs, and when the larger issues in the life of the nation are concerned they are on the average more likely to judge truly. As the units of opinion contributed to the common stock in the one case may be of a different make from those contributed in the other, it follows as a necessary consequence that the bodies of public opinion compounded out of such ingredients may be of different makes too. Indeed, in view of the marked variances in the collocations of forces which control the formation of public opinion in the two respective cases it seems perfectly safe to conclude that there must always be a certain amount of differentiation between the two makes of public opinion and that they never can be equivalent products. That being so, public opinion as it normally is in the one case and public opinion as it normally is in the other ought to be regarded as two distinct things called by the same name, and the identity of name therefore becomes misleading and the expression itself ambiguous. But the most important conclusion that emerges is that the psychological conditions prevailing under a federal form of polity are less favourable than those prevailing under a unitary form of polity to the genesis of a public opinion capable of efficiently playing its part in the working of the system of Responsible Government. That conclusion, indeed, is of peculiar interest in its application to Australia. There the public at large is not protected, as it generally is in the United States, by the existence and exercise of powers of veto upon legislation. The power to amend the State Constitutions is, moreover, vested in the State Parliaments and not deposited elsewhere as it generally is in the United States. Furthermore, the exercise of the executive power is controlled by the several Parliaments of Australia but is not controlled by the legislative bodies of the United States. Hence, in the absence of other checks, the Parliaments of Australia have its people at their mercy unless there be forthcoming from the latter a public opinion animated by such a keen sense of the nation's natural objective as to be able to keep the respective Parliaments working upon the right lines. It appears that the psychological conditions prevailing under the present constitutional system are far from being the most favourable to the formation of a public opinion with a sharpness and breadth of vision equal to doing that.

CHAPTER IV

THE BEARINGS OF FEDERALISM UPON THE SYSTEM OF RESPONSIBLE GOVERNMENT IN AUSTRALIA

THE essence of the system of Responsible Government is the interlocking of the executive power as primarily vested in the Ministry and the legislative power as vested in the Parliament, and the relations between these two depositaries of power are so adjusted that they may regularly work in concert and each back the other up. It rests with the Ministry to take the initiative in connexion with both administrative and legislative action, but Parliament decides whether it will follow the lead so given it or insist upon the adoption of some other course. Accordingly the Ministry has to think out the scheme of policy which is seemingly adapted to the then existing circumstances, to get to know its own mind as to what fresh legislation, if any, is required and, in order that the law-making machinery may never be set in motion except effectively, to prepare the Bills which the Parliament is to be asked to pass. It is for the Parliament on its part to say the last word as to how the executive and the legislative power can best be exercised, and to hold the Ministry to strict account for what it has done or left undone in the whole of its management of such public affairs as are within the ambit of the Parliament's jurisdiction. In the event of any serious difference of opinion setting the Ministry and the Parliament at loggerheads, one of two things must as a rule happen. Either there must be a new Ministry or there must be a new Parliament, because the success of the system of Responsible Government depends upon the maintenance of a good understanding between the two bodies. The Ministry thus has the provisional, and the Parliament the ultimate, control over the exercising of both the executive and the legislative powers. In a sense the Ministry is the Executive Committee of the

Parliament, or, as perhaps it may be better put, the Ministry is the self-starter for the Parliament. Together they form an engine of decision and action and make up between them but a single set of institutional machinery. In previous chapters that expression has accordingly been used to cover them both. Such then being in rough outline the system of Responsible Government, it grew up and became fully developed as is well known under a unitary form of polity. Its home of origin is Great Britain; and experience justifies the assertion that under the set of conditions distinctive of that country's unitary form of polity the system of Responsible Government has proved its worth and has supplied the nation with the means of reacting to its environment and thereby keeping itself fit to survive. It is hardly necessary to add that the interlocking of the legislative and the executive powers which is the leading feature of the system of Responsible Government is alien to the method of conducting public affairs now established in the United States. In that country the federal principle of social organization has been worked out into a constitutional system which attaches much importance to keeping the legislative and the executive powers as independent of one another as possible. By adopting a similar federal principle of social organization Australia has called into existence a set of conditions which differ—to the extent shown in the Second and Third Chapters—from those which are, so to speak, the native conditions of the system of Responsible Government; and the question naturally arises as to how the finely geared mechanism of that system is affected in its behaviour by such a change in the conditions amidst which it has to work. To answer the question one must compare the potential efficiency of 'unitary' Responsible Government (as it may be termed), under the conditions established for it by the British or any other strictly unitary constitution, with that of Responsible Government as concurrently applied, under the conditions imposed by Australia's federal polity, to seven distinct spheres of action. (These manifold applications of Responsible Government have a certain unity of their own, as they all are concerned with the affairs of one nation; therefore Responsible Government as so applied may legitimately be considered as a whole and called for short 'federal' Responsible Government.)

As under unitary and federal Responsible Government alike the legislative and the executive powers are interlocked, much that normally goes along with the interlocking must be more or less common to them both. For instance, the responsibility of the Ministry to the Parliament, the responsibility of members of Parliament to their constituents, and the influence exerted upon the mechanism of government by the pressure of public opinion, are all matters in which to outward appearance the two forms of Responsible Government closely resemble one another. Furthermore, the rules under which the ins and the outs play the game of politics, if so it may be called, are very much the same in both cases. But as against these points of apparent agreement is to be set one outstanding matter of difference. Unitary Responsible Government regulates the management-in-chief of public affairs by regulating what goes on within a single system of governmental activities. Federal Responsible Government regulates the management-in-chief of public affairs by regulating separately what goes on within seven distinct systems of governmental activities. The difference in the method in which the system of Responsible Government is applied in the two cases is therefore one which may easily lead to great differences in the results procurable on the average from the practical working of the two forms of the system. Hence there is good reason for instituting the comparison suggested above; and if it is to be convincing it must compare the two forms of the system from the point of view of their utility as instruments for the attainment of the national well-being and safety. To make the comparison as realistic as possible and to condense the phraseology to be used therein the indicative mood and present tense will in general be employed when referring to unitary Responsible Government in Australia. The results of the comparison will not depend on whether unitary Responsible Government is to be regarded as a reality there or not, and, as some of the conditions under which it would work there (as, for example, the overgrowth of the metropolitan populations) are really existent although the remainder are not so, the more convenient course seemingly is to proceed on the assumption that all the relevant conditions are real. Hence the use for the purposes of the comparison of forms of expression suggesting that unitary Responsible Government and the conditions under which it would work are all actually now operative in Australia.

To anticipate what in the sequel will be duly established there is a double discrepancy between the potential efficiency of unitary and federal Responsible Government respectively. One matter of difference is as to the powers of the apparatus of governmental mechanism over the entire results of governmental activities within the nation, or—to put the same thing in another way—it is a difference as to the controllability of those results regarded as a unit and a whole. This difference goes to the quantity of the work that the two forms of Responsible Government can respectively get done, and it may therefore be earmarked as the quantitative difference in their efficiency. The other matter of difference is as to the degree of accuracy with which individual governmental operations can be adjusted to the necessities of the particular cases to be dealt with, or—to use other words to convey the same idea—it consists in a difference in the amount of precision with which the means can be adapted to the end which should be in view. This difference goes to the quality of the work that the two forms of Responsible Government can respectively get done, and it may therefore be earmarked as the qualitative difference in their efficiency. One difference then, is, as to how much can be done and the other is as to how perfectly it (meaning thereby whatever in either case is feasible) can be done. Clear thinking will be furthered if in treating of these two differences they are kept isolated as much as possible from one another. For that purpose each of them will be dealt with on the footing that it is the only one which for the time being needs to be taken into account. Accordingly, whilst the quantitative difference is being considered the two forms of Responsible Government will be assumed to be otherwise on a par. Similarly, whilst the qualitative difference is under discussion other things will be assumed to be equal in the connexion then in view.

Under federal Responsible Government the principle of responsibility cannot reasonably be enforced against any depositary of legislative or administrative power except subject to qualifications dictated by considerations of simple justice. If the national interests had required something to be done which was nevertheless left undone it would obviously be unjust to hold any Ministers or members of Parliament responsible for the non-feasance unless the thing which needed doing came within the compass of the average working-capacity of the apparatus of governmental mechanism with which they were associated. Again, if the Federal set of institutional machinery in discharge of its normal functions were to deal with one subject-matter of governmental activity and a State set of institutional machinery in discharge of its normal functions were to deal with another, and the natural consequences of what each of them so did were to interact and bring about a state of things different from what it would otherwise have been, the Ministers and members of Parliament associated with neither set of institutional machinery could with the least justice be held responsible for the exact state of things which eventually accrued. The Ministers and members of Parliament concerned would have been answerable for the natural consequences of the acts of commission or omission to which they had respectively been parties, but beyond that their responsibility would not go. Under unitary Responsible Government on the other hand there is no logical basis for either of the above qualifications of the principle of responsibility. The average working-capacity of the single set of institutional machinery is undefinable in its compass and permits of every conceivable operation of government being lawfully undertaken and within the limits of the practicable duly performed. If anything needs doing in the national interests there are always some depositaries of legislative or administrative power who can justly be saddled with the responsibility if the thing in question be not done. Hence no case can arise in which there is nobody responsible for governmental acts of omission. They as well as governmental acts of commission all come within the purview of the principle of responsibility and are fully covered by it. Moreover, the single set of institutional machinery can impose its will upon all other constituted authorities within the nation and it therefore has the means of ensuring that every course of action taken by it shall not be interfered with at any stage but shall be followed by its undiluted and undiminished effects. It is thus possible for each governmental act of commission or omission freely to work out its own natural consequences, and whatever the ensuing state of things may prove to be there are always some depositaries of legislative or administrative powers who can—at least until the contrary is proved—be justly held responsible for all of it. Under unitary Responsible Government, then, responsibility as a principle of action is unqualified, all-embracing, and entire. The pressure which it can normally exert upon the various depositaries of legislative or administrative powers can, under favourable conditions, evoke serious efforts on their parts to do whatsoever may be required in the national interests. In consequence unitary Responsible Government can offer the nation a potential guarantee against misgovernment in any form, no matter what.

Under federal Responsible Government the above-mentioned qualifications reduce the efficacy of the principle of responsibility when regarded as a force making for good government. By reason of the first of the above qualifications the principle as so qualified cannot actuate the apparatus of governmental mechanism to undertake and perform any substantive operations of government except those which come within the compass of its average working-capacity. For the purposes of federal

Responsible Government that average working-capacity, being limited, must be taken as it is. At the opening of the Second Chapter it was shown that under a federal form of polity the average working-capacity of the apparatus of governmental mechanism is not up to the performance of two substantive operations of capital importance. One operation is the regulating of all legislative and administrative actions taken in the course of the management of public affairs by reference to the exigencies of the nation's situation in its entirety. The other operation is that of so co-ordinating all the aforesaid actions as to make of them a coherent whole. In the same chapter also a number of instances were adduced which may now be shortly recalled for the purpose of illustrating how gravely the national interests are compromised because the due performance of neither operation comes within the purview of the principle of responsibility. There is, for example, the menace to the nation's survival-value involved in the neglected drift citywards; but there is no Minister and no member of Parliament who can be held responsible for the failure to take the proper measures for arresting and reversing the drift. The national finances, too, are being administered in a way which violates elementary rules of sound financial management; but there is no Minister nor member of Parliament who can be held responsible for the continuance of the present organized financial disorder. In many directions also there are obvious duplications of, or collisions between, Federal and State governmental activities; but there is no Minister nor member of Parliament who can be held responsible for the consequent frittering away of the nation's energies and moneys. By reason, then, of the first qualification of the principle of responsibility its control over the workings of the seven sets of institutional machinery falls short of being entire. In the result the nation is unable to get certain things done, without the doing of which, as the above examples show, there cannot even be the semblance of good government. The second of the above qualifications involves a further diminution of the area over which the principle of responsibility can shape the courses of events. The natural consequences of Federal and State governmental activities respectively can, and in the ordinary course of things do, on occasions interact. Whatsoever form the interaction may take—collision, competition, overlapping, duplication, or the like—the supervening results as determined by the interaction are outside the purview of the principle of responsibility and cannot be sheeted home against either the Federal or the State depositaries of legislative or administrative power. In most cases it is difficult to know where to draw the line between what are the natural consequences of the original governmental activities and what are the supervening results as determined by the interaction; and it is therefore difficult to know where the zone of responsibility ends and the zone of irresponsibility begins. But this difficulty does not arise in cases where the natural consequences and the supervening results can all be expressed in terms of the same denomination. For instance, if a taxpayer has to pay away one-thirtieth of his total income in the form of Federal taxes there is somebody who can be held responsible for that; and if he has to pay away an additional one-twentieth of that income in the form of State taxes there is somebody who can be held responsible for that. But what is of crucial importance to the taxpayer is the fact that one-twelfth of his income is being sequestrated for public uses; and for that fact—the one which concerns him most—nobody can be held responsible. A similar state of things can be seen to exist in regard to such matters as the total amount of public indebtedness per head of the population in Australia, the total number of statutes Federal and State that the individual is presumed to know and bound to observe, and the total amount of effort required on his part if he is to keep himself in touch with what is going on within both the Federal and the State systems of governmental activities. Possibly there may be other cases also where it can be seen at a glance where responsibility ends and irresponsibility begins. But as a rule the extent to which allowance must be made in practice for this qualification of the principle of responsibility remains obscure. All that can be known for certain is that in the course of the management of the nation's affairs a number of things must in general happen as to which no depositary of legislative or administrative power can be found who is liable to answer for them at his peril. In all such cases, it follows, the principle of responsibility will have become a dead letter, and matters touching the national interests will have been left to be the sport of chance. So much being clear, there can be no room for doubt of the existence as previously affirmed of a quantitative difference between the potential efficiency of the two forms of Responsible Government. When the two are compared it appears that, within the limits of the possible, unitary Responsible Government can, and federal Responsible Government cannot, get the apparatus of governmental mechanism to perform all the substantive operations that are essential if good government is to be achieved, and it further appears that within the aforesaid limits unitary Responsible Government can, and federal Responsible Government cannot, so control all the practical results produced in the course of the management of public affairs as to make those results what in the interests of good government they need to be.

In order to deal with only one thing at a time nothing has been said, in the course of the discussion as to the quantitative difference between the two forms of the system of Responsible Government, about the principle of responsibility not acting in the same way upon the minds of the depositaries of legislative or administrative power in the two respective cases, or about its causing those depositaries to form divergent conceptions of their duties. For the sake of consecutiveness the omission is one which had better be supplied before fresh ground is broken, and it accordingly becomes apposite to consider next the nature of the principle's action as a determinant of the respective directions in which those who are subject to its influence tend to move. Under unitary Responsible Government the whole state of the nation is—to repeat what was said before—an object-lesson showing how the business of government has in general been conducted. To Ministers and members of Parliament it is a perpetual reminder that they must expect to see their success or failure placed on record there in a form of script so plain that he who runs may read, and the prospect thus held out to them tends to make them realize that they cannot afford to play fast and loose with their official duties. As for the Ministers, they are bound at their peril always to hit upon the right thing to do, let the circumstances be what they may, and to do it at the right time and in the right way; and they know that if they fail so to deal with any matter of importance they must reckon upon it that the state of the nation will show sooner or later symptoms that something has been amiss somewhere. Such symptoms as soon as they appear will almost automatically bring the Ministry under attack. For the purposes of the attack it will not be necessary for the attackers to put their fingers on the exact spot where the policy pursued has been at fault or to prove the causal connexion between some alleged mistake in policy and the untowardly symptoms apparent in the state of the nation. The mere fact that such symptoms exist will speak for itself and be sufficient to put the Ministry on the defensive. Moreover, when so attacked the Ministry will be forced to fight the matter out upon the ground chosen by its assailants. Under the circumstances there will be no room for a plea that the Ministry's legal powers were too restricted to enable it to deal adequately with the situation as it presented itself. All possible powers were within the Parliament's gift, and if further powers were required by the Ministry it was its duty to have set the Parliament in motion with a view to getting a grant of them, or in the case of an emergency brooking no delay to have acted as if those further powers were already in hand and to have sought indemnification from the Parliament afterwards. Nor would there be any room for the plea that the responsibility for what had happened did not rest upon the Ministry's shoulders but upon other administrative authorities within the nation. All such authorities were under the Ministry's supervision, if not control, and if any of them refused to serve as willing instruments in working out the entire scheme of policy as formulated by the Ministry the latter was in duty bound to have forthwith taken them to task and to have bent or broken them. The Ministry when attacked on the strength of the untoward symptoms in the state of the nation will thus be out in the open, and it will have no option but to meet the accusation squarely on the facts. The only line of defence left to it will be to prove that the symptoms in question could not possibly have been due to any misfeasance or non-feasance on its part; and if it fails to make that contention good it must be prepared in the ordinary course of things to pay the penalty of forfeiture of office. Under the conditions prevailing in such a case the decision will naturally tend to turn upon the merits; and in view of the likelihood of the decision's so turning Ministers can never feel safe nor sure that the after-effects of any mistake in policy will not some day or other rise up in judgement against them and cost them their offices. Hence by force of circumstances Ministers are driven for their own protection to do their best to frame a scheme of policy so thoroughly thought out and so well compacted in all its branches that, come what may, they can venture to stand or fall by its soundness. Members of Parliament on their parts are generally as anxious to obtain re-election when next they face their constituents as the Ministry is to retain its position; and therefore they are loath to accept the responsibility of keeping in office a Ministry whose policy stands condemned by the logic of events. Even if they had consistently supported the Ministry, even if they had in the first instance affirmed by their votes that they could see nothing wrong in principle about what the Ministry proposed to do, yet as soon as the state of the nation began to tell a different tale they would naturally be driven to reconsider their attitude towards the Ministry and to leave it to its fate. The responsibility of members of Parliament to their constituents is thus complementary to the responsibility of the Ministry to the Parliament, and when taken therewith it is a means of making assurance double sure. The consciousness that a mistake in a matter of policy is almost certain to recoil upon the heads of those who were parties to it thus tends in practice to keep the depositaries of legislative or administrative power always racking their brains in order to decide what the nation must next proceed to do if its well-being and safety are to be ultimately attained. Under unitary Responsible Government there is a fair prospect that a good look-out will be kept as to all matters touching the national interests and that the ship of state will be conned with reasonable care. Under federal Responsible Government the conditions for the enforcement of the principle of responsibility are far different. Nothing disclosed by the whole state of the nation can be relevant by itself as evidence either for or against individual Ministers or members of Parliament, whether Federal or State. It would be futile to bring Federal Ministers and members of Parliament to account merely on the strength of the appearance of disquieting symptoms in the state of the nation. They would say with reason that there had been besides theirs six other fingers in the pie. It would be equally futile to take State Ministers or members of Parliament to task merely because of the general position of affairs within the State. They would answer with truth that the State set of institutional machinery had never had the whole field of governmental activities to itself. No Ministry, whether Federal or State, can be placed in jeopardy by a charge that the consequences of its policy have been mischievous, unless some specific mistake in policy can be alleged against the Ministry and unless there is some evidence of a causal connexion between the alleged mistake and its supposed consequences. Proof of the causation of those mischievous consequences must first be forthcoming before the Ministry can be called on for its answer. The effects of any governmental act of commission or omission, whether Federal or State, cannot, as already said, be followed up and traced all the way from their start to their finish, but that does not prevent perception and due identification of some of the more immediate consequences of any such act. Cases may therefore easily happen in which those who attack the Ministry are well able to discharge the burden of proof incumbent upon them and to show to the satisfaction of any judicial mind that there was a causal connexion between the mischiefs forming the gravamen of the charge and the specific misfeasance or non-feasance imputed to the Ministry. In such cases, then, the attack might be successful if the Ministry could be forced to fight the matter out upon the ground chosen by its assailants and prevented from raising a multiplicity of issues. In the state of things which a federal form of polity brings about the Ministry cannot be pinned down in that fashion. It can, for example, attribute the whole blame for the mischiefs in question to the constitutional limitations upon the functions of the Parliament in whose name it—the Ministry—was acting, and can insist that to deal with the situation as it was there was need of further powers, powers, forsooth, that the Parliament was not competent to grant. Or the Ministry may proceed to shift the responsibility bodily from itself on to one or more of the other constituted authorities in the nation—authorities which it had no pretensions to control. For instance, the Federal Ministry if brought to bay can set up the case that the mischiefs giving a tinge of colour to the charge against it were in fact due to things done or left undone on the part of State Ministries and Parliaments. Similarly, a State Ministry can in its turn purport to exonerate itself at the expense of the Federal Ministry or Parliament. There are several pleas of this order which could furnish the Ministry attacked, whether Federal or State, with attractive themes to play variations upon; and even in the worst of cases some show can be made of explaining away what otherwise would be satisfactory proof that some of the Ministry's policy had been injurious in its practical results. It is for the Ministry to choose which of the various defences thus open to it it will adopt; and it is therefore in a position to defend itself to the very best advantage. With the exercise of some ingenuity it can easily contrive so to burke the issue that none of its habitual supporters need feel driven to abandon it to its fate. The same indecisive result is moreover likely to be reached if the matter is reopened before the constituencies. A member of Parliament who is called to account before his constituents for the vote which he gave in favour of the Ministry upon any such charge as the above can defend himself by precisely the same tactics as served the Ministry's turn in Parliament, and with an equally good prospect of success. In cases of this nature most of those who are to hear and determine the issues involved are ill-prepared to approach them in a judicial frame of mind. The Ministry would in the ordinary course of things not be in office unless it commanded a majority of votes in Parliament; and its supporters to a man are hardly to be convinced, except against their wills, that what are asserted to have been the consequences of the alleged mistake in policy have really been due to it. For analogous reasons a similar state of things usually tends to prevail whilst the matter is being re-argued before the constituencies. Under such circumstances there is not much chance that the machinery for applying the sanction upon which the principle of responsibility rests will do its work properly. Even if it goes so far as to purport to sift the truth out of the confused mass of materials submitted to it the most that in general can be elicited from it is a verdict of not proven. Under federal Responsible Government, then, it is as a rule impracticable to enforce responsibility for the after-effects of governmental acts of commission, suitable means thereto being lacking; and the depositaries of legislative and administrative powers can accordingly go about their business without being haunted with the fear that any of those after-effects will sooner or later find them out and be visited upon them. Such a result indeed does not destroy all the driving force of the principle of responsibility, but of a certainty it causes a change in the consequences of its impact. The depositaries of legislative or administrative power know that whatever they do or propose to do will have to run the gauntlet of criticism from various points of view, representing so many forms of subjective standard, and they also know that they may have to pay the penalty if the scheme of policy to which they give effect proves open to a plausible objection from any such point of view. With such a dangerous defile ahead of them their ideas as to what course of conduct they ought in self-protection to pursue become definite and clear. They betake themselves to devising such a scheme of policy as will seemingly stand the test of all such forms of subjective standard as are likely to be applied to it; and if they can settle to their own satisfaction the details of such a scheme they do not feel called upon to do more than proceed to execute it. In their view of what the principle of responsibility requires of them they are in nowise bound to raise and consider any question as to what may be expected to be the ulterior consequences of the scheme, if and when executed, and they therefore deem themselves justified in going on with what they have decided to do irrespective of its bearing upon the attainment of the national well-being and safety. Under federal Responsible Government, then, the principle of responsibility so operates as to purport to guarantee something clearly distinguishable from what it purports to guarantee under unitary Responsible Government. In the former case the promise held out is that no governmental act of commission or omission will occur which will not stand the test of the commonest forms of subjective standard. In the latter case the promise held out is that no such act will occur which will not prove to be right when tested by the objective standard. Until the whole bearing of any such act upon the attainment of the national well-being and safety has made itself plain it is no doubt legitimate under unitary Responsible Government to test the act by forms of subjective standard. No better course is possible under the circumstances. But the result of the test is provisional only. If an act which seems to be right when so tested afterwards proves to be wrong when the objective standard comes to be applied, it is the latter test which must prevail, and those who are answerable for the act must be prepared to pay the penalty accordingly. Under federal Responsible Government, then, it is quite consistent with the action of the principle of responsibility that the national well-being and safety should be left to take care of themselves whilst under unitary Responsible Government the deliberate pursuit of them is the very object which the principle seeks by its action to ensure. What is deliberately pursued is more likely to be attained than if the pursuit thereof is not the main purpose. Hence the more thorough and searching action of the principle of responsibility under unitary Responsible Government renders that form more trusty than federal Responsible Government, even if there were no other difference between the two; and the superiority of unitary over federal Government in this respect is one—but not indeed the main—element in the qualitative difference between them.

The principle of responsibility is only a means to an end, that end being the adjustment of some particular system of governmental activities in all its varied ramifications to the requirements of public opinion. If public opinion is not in a fit state to know what 's what in matters of government and politics, the more perfect the action of the principle of responsibility, the more certainty will there be that things must go wrong. The system of Responsible Government can only be a success if public opinion is equal to the due discharge of its chief function —the function, that is, of exercising a general supervision over all the operations of government, and of culling out for condemnation such of them as have been misdirected. Its function in that regard may roughly be compared with that of the automatic weighing-machine in a mint. The coins as they are struck off go into a piece of mechanism which only lets those which are of just the right weight pass out for service. In a somewhat similar fashion public opinion needs to display machine-like precision in picking out and pouncing upon those operations of government which are somehow defective, in order that the high officials answerable for them may be summarily punished. If public opinion has within itself resources which enable it to prove itself expert in getting the true measure of governmental operations (conditions being otherwise favourable) the system of Responsible Government can justify the hopes that are built upon it. If public opinion has no such resources within itself nothing can redeem the system from failure. Hence it becomes important to consider under which form of Responsible Government—the unitary or the federal—public opinion is the more likely to exhibit the requisite acumen in discriminating between right and wrong governmental operations so that its censures may always be forthcoming where wanted and never where they are not.

Some of the materials necessary for a reasoned conclusion upon the above question are already available. It was shown in the preceding chapter that whenever the contributors to public opinion under a federal form of polity set about making up their minds as to what their judgements ought to be upon any matter connected with the management of public affairs, they can be at a triple disadvantage as compared with the contributors to public opinion under a unitary form of polity when engaged in a similar occupation, and that in consequence the potential precision of public opinion's power of judgement tends to be less in the former than in the latter case. But there are other factors besides psychological conditions to be taken into account if the above question is to be thoroughly threshed out. The working of the system of party politics as carried on under the circumstances obtaining in Australia can hardly fail to exert an influence all its own upon the process whereby public opinion is formed in the two respective cases, and it therefore becomes necessary to consider what effects the activities of the party politician—who it is hardly necessary to premise has his special way of looking at things—are in the ordinary course of events likely to produce whilst public opinion is in the making. He becomes what he is, considered generically and not individually, on the public and not the private side of his character, by starting off from the assumption that the only means whereby the attainment of the national well-being and safety can be perfectly ensured consists in the doing by the political party to which he belongs of whatever may be proper to that end, and then by allowing those means to usurp the place of that end in his mind. Hence everything with which his party is or may be identified is appraised by him in accordance with its bearing upon the fortunes of his party, and the distinctive form of subjective standard to which he refers all subject-matters of that sort is one which measures them in terms of their tendency to capture or alienate political support and to win or lose votes. In his zeal to further the interests of his party he spares no effort to induce all whom he can influence to make his distinctive form of subjective standard their own and to apply it in every instance where his party has anything to gain by their doing so. But there can be cases in which no such effort on his part will have any chance of success. Where the bulk of the contributors to public opinion are educated up to objective politics, that is to say where looking at public affairs from the nation's point of view they are wedded to the use of the objective standard, they will be forearmed against any temptations which the practical politician will have to offer. Each of them will feel that he will not be acting up to his lights if he prefers any form of subjective standard to his customary one, and the general sense prevailing amongst them of the binding force of the objective standard will render them proof against any pressure that the practical politician can apply. Hence where politics are objective the process whereby public opinion is formed is normally not liable to be marred by any disturbing influence which the practical politician can bring to bear upon it. The opposite thing may easily happen where politics are subjective, because in such a case the facility with which the contributors to public opinion can chop and change between various forms of subjective standard tends to deliver them into the party politician's hands to work his will upon them. They are, or the bulk of them are, members of one or other political party (it will be convenient to assume that there are only two) and the stimulus to which the rank and file of a political party react most generally and most violently is that of fear—fear of what the other side will do if it gets into power. By playing upon this ruling passion of theirs the party politician can flog them into doing blindly what they are told and can cow them into acquiescing in almost anything alleged to be serviceable to the prospects of the party. If, for example, it becomes necessary in order to get the better of the other side that some sectional interest be won over, at no matter what cost; and if for that purpose the party politician proposes to make it a present of something that is somebody else's, or to strike with it some other equally unconscionable bargain; the rank and file of the party find no course open to them except to give a tacit approval to a thoroughly unworthy transaction. What happens in such a case—and it can hardly be called either fanciful or extreme—is that the great majority of the regular adherents of the party are driven to take such a view of the affair in question as amounts to an abandonment of the several forms of subjective standard to which they otherwise would have resorted, and to substitute therefor that form of subjective standard which is dear to the heart of the party politician. What can be done on the one side in politics can also be done on the other. Each party tries to outbid its rival; and the only thing which can save the nation from having matters of vital interest to it bartered away for the sake of catching votes is that the best, because most impersonal, forms of subjective standard—those resting upon sound political principles—should lose none of their power to impose themselves, and that the party politician's distinctive form of subjective standard should not prevail against them. The exigencies of party politics being what they are, the authority of those principles is liable to undergo constant attrition; and public opinion as it swings first towards one party and then towards the other must tend to lose more and more of its perspicacity in discriminating between such governmental operations as are really right and such as are wrong. This process of degeneration in the precision of public opinion's power of judgement in matters of government and politics is moreover helped forward by the coexistence of two factors which under the present constitutional arrangements for the government of Australia become operative in combination. One factor is the overgrowth of the metropolitan populations. All the States are, so to speak, hydrocephalous. At the last decennial census—1921—the metropolitan populations of all six States together comprised (according to the official figures) 43·01 per cent. of the total number of souls within the Commonwealth. This figure rests upon a conventional method of distinguishing between what is and what is not metropolitan population, all residing outside the ten-mile radius from the General Post Office in a State capital being reckoned as non-metropolitan. It may be difficult, perhaps impossible, to find a mode of drawing the line which would not be open to some objection or other when applied to Australia as a whole. But all the same the method in use when applied to such a case as (say) that of Sydney signally fails to do justice to the facts. Any one can verify this for himself. For instance, he can see in the mornings streams of people flowing from outside the ten-mile radius into Sydney and then ebbing back again at night. Why most of these people go to Sydney is to earn their living there, and the worldly fortunes of those of them who do so are bound up with and staked upon its continuing to prosper. They and their dependents (if any) are as thoroughly identified in interest and as much at one in thought and feeling with Sydney's inner population as if their homes lay within earshot of the chimes of the Post Office clock. Nevertheless, the foregoing basis of computation shifts them bodily across the dividing line and only takes account of them as being part and parcel of the State's non-metropolitan population. The impression likely to be produced by the above-cited official figures as to the ratio between the total metropolitan and non-metropolitan populations of the Commonwealth is accordingly more or less misleading, the former population being in truth greater, and the latter smaller, than they are respectively represented to be. The point, however, is not worth dwelling on because the figures as they stand make it plain that on the average the State capitals are within a measurable distance of commanding an absolute majority of the voting-strength of the respective States; and so formidable a weight of numbers when coupled with certain obvious advantages which accrue to the metropolitan populations from the very fact that they are metropolitan is quite sufficient to tilt the balance in their favour. Tasmania, indeed, is the only State in which the metropolitan population is as yet far short of being equal to all other folk in the State put together, but on present indications this exception is not likely to last for long. The inhabitants of a State capital are, it is scarcely necessary to mention, placed so closely together that they can readily combine and take united action in support of what they deem to be their mutual interests; and by dint of doing so they can acquire a sense of solidarity—a sense which lacks no facility for becoming articulate and fully expressing itself. Even in so simple a matter as the mere act of voting, those living in the precincts of a State capital are better off, man for man, than those dispersed abroad through the remoter regions of the State. At or near the capital the elector can exercise his franchise at the expense of a small fraction of his time and energy. Outback the journey to and from the polling-place may easily take up a substantial part if not the whole of a day; and if a heat-wave or a drought happens to be on or the floods chance to be out the journey may not be practicable at all. Moreover, the size and density of a State capital's population allow it to supply the means of thriving to one or more powerful newspapers to act as interpreters of its inmost thoughts and wishes and to help it to a knowledge of the things that it really wants and means to have. To cap all these advantages the inhabitants of a State capital have those who constitute the State Government living in their midst and breathing the same atmosphere as they are wont to do themselves. They can never be out of the Ministers' sights and therefore they are not likely to be for long out of the Ministers' minds. With so many things working together to augment if not to multiply the political power and prestige of the State capitals, each of them—at least on the mainland—must be the potential master of the situation as regards the internal affairs of the State. So long as the State capital's population is not divided against itself nowhere within the State does it encounter a centre of resistance that can hold out in opposition to it. *Ubi major pars ibi totum* is the maxim of the common law, and the major part of the public opinion of the State is accordingly admitted to count as if it were the whole. The public opinion that says the last word as to how the State must be governed is, it follows, a public opinion which tends to be mainly of the metropolitan population's making. One of the two factors referred to above as operative in combination thus stands out conspicuously enough. It remains to get, if possible, as clear a view of the other. The second factor is that in the States as such considerations founded upon the need of a more effective occupation of the Australian continent as a whole are apt to carry little if any weight. To the Commonwealth is committed the defence of the continent; and the plain intent of the Constitution is that the Commonwealth shall alone have the execution of the measures to be adopted to that end and make the best use of such materials for the purpose as it may find ready to its hand. If the British navy happened not to be available as a shield for Australia a hostile descent at some selected spot on its lengthy coast-line would cease to be too risky an operation to attempt, and in such a case the task of expelling an invader who had once made good his footing might overtax all the resources that the Commonwealth could bring to bear. Possibly, or even probably, if the worst came to the worst, the Commonwealth might fail to ensure the absolute safety of Australia, and that fact is as obvious to foreign peoples as to ourselves. Hence the policy which the Commonwealth advisedly and avowedly pursues in regard (say) to alien immigration is not backed up by a show of physical force imposing enough to compel the outside world to respect it; and it is matter for speculation whether there are not powers which are nursing their grievances on that score and biding their time until they can venture to bring the issue to the proof of arms. There is thus no certainty that the means available to the Commonwealth will suffice to ensure the attainment under all circumstances of the end—the security of Australia—that it is bound to keep steadfastly in view, and the first and indispensable step towards making those means what (all things considered) they ought to be is to help settlement to spread itself abroad through the length and breadth of all Australia. For that purpose there is as already shown need of a scheme of constructive policy designed to make rural industries more attractive to capital and labour than they are at present. The constitutional limitations on the competency of the Commonwealth disentitle it to take the chief part itself in any such scheme. It is the States which—to speak broadly—are alone competent to decide what is to be done with the waste lands of the Crown situated within their respective boundaries and also with the minerals contained in similarly situated lands which are no longer vested in the Crown. It is the States, too, which alone can deal with the regulation of private property in land with the provision (subject to some exceptions) of facilities for land transport and with the like subject-matters of governmental activity. Hence, if the foregoing scheme of constructive policy is to come to anything at all, it must be taken up by the States and, as each of them is supreme in the sphere of action reserved to it, of their own free will. There are reasons, however, why public opinion in each of the States would not be prepared to lay other things aside in order to co-operate in the prosecution of such a scheme. One reason is to be found in the rifeness of misconceptions as to the exact nature of the relations between the Federal and the several State systems of governmental activities. Although the proposition that what the Constitution expresses it also impresses sounds like a truism, it does not convey the whole of the truth. The impressions which the Constitution tends to produce as it works upon those living under it are liable to be, and more or less are, distorted by various prejudices and prepossessions to be found amongst men in the mass. For example, what the Constitution virtually says about the mutual relation between the Federal system and each State system of governmental activities is that they are to be independent of one another for certain purposes. But this idea of a qualified independence is in practice so twisted out of shape as to be taken to amount to an absolute independence for all purposes. People thus come to believe that the two systems of governmental activities stand at such a distance apart from one another that the success of one system in any respect whatsoever cannot possibly depend upon the course taken by events in the other. Hence considerations as to the requirements of the Commonwealth in connexion with its function of defence lose force in a State sphere of action, although if perchance arising in the Federal sphere of action they would probably have at once carried conviction with them. Similarly, when the Constitution relieves the States from the obligation of taking any active steps to ward off the danger of foreign aggression and to that intent commits the whole duty of defending them to the Commonwealth, what it in effect says is that the States may hope to pursue the even tenor of their ways in peace so long as the Commonwealth finds itself in possession of the means of providing the requisite shelter for them. But this guarded guarantee is apt to be so misconstrued by those to whom it is addressed that it lulls them into a false sense of security and makes them ready to believe that no matter what may be done within the State systems of governmental activities they personally with all their belongings will remain as safe under the protecting arm of the Commonwealth as if there were no such thing as the struggle between nations for existence. By unwittingly falling into a double mistake as to the true significance of the present constitutional arrangements for the government of Australia, the contributors to the public opinion of the respective States as such are for the most part wont to rest satisfied that they need not concern themselves about the more effective occupation of the continent or about such measures of policy as will be assistant thereto, but that they may with impunity allow practical politics to run such courses as will give the go-by to all considerations of that sort. Another reason—and a subsidiary one—for holding that no such scheme as that suggested above could be hatched out in the field of practical politics is that it would require all the States to come into line together and to make common cause in giving effect to it. No one State would be more interested than the others in the success of the scheme, and therefore none of them would feel specially called upon to give a lead and make the first move. As in other cases of divided responsibility there is a strong presumption that, like the Earl of Chatham and Sir Richard Strachan in the familiar epigram, they would stand waiting for one another; and the outcome would be apt to verify the truth of the adage that what is everybody's business is nobody's business. Even if such a scheme were acceptable in principle to public opinion in the States—and that, in view of what has been said above, is rather an extreme assumption—yet the difficulties of getting it generally taken up and put into practice would in all probability render it abortive. For one reason or another, then, it is but futile to expect the bodies of public opinion as evoked in and for the States to attach paramount importance to the more effective occupation of the whole Australian continent or to make that the fixed point upon which the State systems of governmental activities must revolve. In virtue of the operation of this factor the public opinion, which is final arbiter in each State as to how its public affairs are to be managed, is not steadied and kept straight by any well-developed sense that the growth and expansion of rural industries is an object of fundamental policy for the sake of which other considerations must be set aside or postponed. This factor combined with the factor previously mentioned—the factor in virtue of whose operation the public opinion of a State tends to be mainly of the metropolitan population's making—renders that public opinion as plastic and ductile for the purposes of the practical politician as he could well wish it to be. Under his guidance the public opinion of a State primarily concerns itself about the bearing of each governmental measure upon the metropolitan population's immediate interests, and if reassured upon that point it is ready without further ado to give its finding in favour of the measure. The question whether the measure is agreeable to the commonly recognized principles of good government is one which does not suggest itself as having anything to do with the case, and in the ordinary course of things it is not raised in any shape or form but is passed over as if it were purely academic. Under such circumstances the State Government tends to become a stalking-horse under cover of which the inhabitants of the State capital can get nearly everything arranged in the way which will be most to their own advantage. On occasions the non-metropolitan population of the State breaks forth into protests against being exploited in so unconscionable a fashion. But it is noticeable how at the centre of things each and every outburst from the rest of the State leaves public opinion cold. Hence the ultimate result of the combined operation of both the above factors is to throw the public opinion of a State out of its reckoning and to smite it with judicial blindness. Its power of judgement upon larger issues when arising in State politics is as little to be trusted as that of a man who, having missed his way somewhere out in the back country, has become so completely slewed that he is perfectly sure in his own mind that he is heading straight for his destination, yet actually he is going in the opposite direction. Analogously, the public opinion supervising the internal affairs of the respective States is almost everywhere throughout the continent conniving at and upholding measures of policy which instead of enhancing the nation's survival-value are to all outward appearances actively reducing it. The mischief wrought in this direction by federal Responsible

Government as now practised in Australia has its original seat in the States' spheres of action. But it is not and cannot be confined within those limits. Those who in State politics have accustomed themselves to looking at matters of government from the metropolitan point of view are naturally prone to carry their point of view with them whenever they cross over into the Federal sphere of action. On turning their attention to matters appertaining to the Federal system of governmental activities they are no doubt met by certain changes of conditions. But they can adapt themselves to the conditions as so changed without greatly modifying their wonted point of view. One such change is the expansion of their potential fields of vision into having a nation-wide scope. But at the outside this change need not involve more than the substitution of the urban for the metropolitan point of view. Another change which they have to face is in regard to the capacity in which they are to think, feel, and act about matters appertaining to the Federal system of governmental activities; instead of doing so as members of this or that State it behoves them to do so as members of the Commonwealth. The capacity in which they concern themselves about such matters is one thing, the point of view from which they look at the selfsame matters is another, and the two things are not necessarily interdependent. Nobody can be inconsistent with himself if whilst exercising his capacity as a member of the Commonwealth he still holds fast to the urban point of view to which he is wedded by force of habit. In fine, the shifting of the venue from a State to the Federal sphere of action involves no such changes of conditions as to drive any one whose urban sympathies and prejudices colour his ideas in regard to the internal affairs of his State to depart from his customary standpoint when he brings his mind to bear upon Federal matters. Thus it comes about that the bodies of opinion respectively concerned with the Federal and the several States' spheres of action undergo practically the same amount of pressure from urban influences. That any difference as to pressure is negligible may be inferred from the concrete instances cited in earlier chapters, showing that the courses of policy pursued in the Federal sphere of action have been no less misdirected in view of the need of stopping the drift citywards than those which have been pursued in the spheres of action of the States. Decorous names—idealism, humanitarianism, and the like—can be, and as a rule are, found to cloak many of the cases in which public opinion has acquiesced without protest in measures of policy which could only have seemed defensible if recourse were had to the practical politician's distinctive form of subjective standard. The commonness of such cases in all spheres of action indicates clearly enough that the process of degeneration first set up by the struggles of political parties to get the better of one another, and then helped forward by the combined operation of the two factors previously referred to, has left the make of public opinion available for the purposes of federal Responsible Government in no fit state to hold the balance even between urban interests and other interests. Thus it has proved itself malleable to an indefinite extent at the hands of the practical politician, and for that reason it can never be depended upon either to exercise an efficient control over the various sets of institutional machinery or to check their incipient aberrations and keep them working true. It is quite possible indeed that public opinion as it emerges under the present federal form of polity may have precision of a sort, but it cannot under the circumstances be truly credited with the sort of precision required to make Responsible Government a success. What is required to that end is precision in discriminating between what is biologically right and what is biologically wrong in matters of government and politics; and the logic of events has proved that of that sort of precision the make of public opinion now forthcoming in Australia has next to none.

Unitary Responsible Government on the other hand provides no room for the combined operation of the above two factors and the combination thus becoming impossible its results necessarily disappear. What in effect happens is that the action of the first factor is turned into the channel which renders it as innocuous as is humanly practicable, whilst the second factor does not come into action at all. The head management of the whole business of government being exercisable by a single set of institutional machinery acting for all Australia, the principles of policy to be applied in the management of public affairs within a State can no more be dictated by the inhabitants of a State capital than by an equal number of persons resident in some other part of the Commonwealth. If the metropolitan population of a State seeks to benefit itself at the expense of the rest of the State it has no direct means of doing so. Nor would resort to indirect means tend to be successful. Certainly there would be nothing in the then constitutional arrangements to prevent the representatives of the metropolitan populations from making common cause together in order to force through some scheme of policy purporting to favour urban interests at the expense of all others. But one amongst other conditions precedent to the success of such an enterprise would be that each of the metropolitan populations should stand steadily united in its support; and under no ordinary circumstances could that condition precedent be fulfilled. The non-metropolitan part of the population of the Commonwealth would not be slow to criticize the proposed scheme of policy from the objective point of view and to condemn it unreservedly as being contrary to the national interests. The metropolitan populations on their parts would recognize that if the proposed scheme of policy could not stand the eventual test of the objective standard there would be no prospect of their escaping with impunity from the evil consequences of giving solid support to it. The natural result of this consideration and of the well-founded arguments advanced by the non-metropolitan part of the population against the enterprise on foot would under the circumstances be to cause each of the metropolitan populations to become divided against itself; and thereupon the only course open would be to let the whole matter drop. The self-evident authority of the objective standard as appears by the case just put is normally a sufficient safeguard against deliberate and concerted efforts to hound on the metropolitan populations into abusing their strengths for selfish purposes. The real risk which the nation runs by reason of the overgrowth of those populations takes under unitary Responsible Government quite another form. The average city dweller is as a rule out of touch and therefore in the main out of sympathy with extra-urban pursuits. Ill-informed as he is about the rural side of the economic life of the nation he is for the most part quite content to stay so, and therefore his views as to what is needed if rural industries are to prosper and expand are determined by what he wishes rather than by what he knows to be true. Personifying as he does the school of thought most in evidence amongst the metropolitan populations public opinion must in large measure take its cue from him. In bulk it therefore tends to be lukewarm about the advancement of rural industries and to remain inert over matters that may be of vital concern to them. To the fallibility of public opinion in this respect there are, however, under unitary Responsible Government some correctives. The several metropolitan populations by their representatives are all deployed into the same arena and there pitted against one another. Their mutual rivalries and jealousies must vent themselves somehow; and the battle of wits which thereupon can hardly fail to ensue is in the ordinary course of things likely to have the effect amongst others of educating public opinion and of making it more apt to take an intelligent interest in all the legitimate activities of the nation whatsoever they may be. The other corrective is still more potent and sure. The form of polity being unitary, the state of the nation is a record which, as pointed out in the previous chapter, can be deciphered if only pains are taken. In all cases where the course of practical politics has been deflected and turned awry by urban influences the untoward consequences as suffered by the nation must reveal themselves in shapes which court attention and repay study. When such results supervene public opinion need not long remain in the dark as to where and how it drifted into its mistake. It can fall back upon the lessons of experience and with their aid get to know its past shortcomings and rectify them. Under such circumstances public opinion's predisposition to look at matters from a strictly urban point of view is an evil which in the long run tends to cure itself. Under unitary Responsible Government, then, the first of the two factors now under consideration is not rendered inoperative (indeed nothing short of a depletion of the numbers of the metropolitan populations could do that), but there are such limits to its power for mischief as to prevent its action being necessarily inconsistent with the attainment of the national well-being and safety. As for the second of the above two factors, its action is abated altogether. The public opinion which comes into being under unitary Responsible Government is not produced parcel-wise as it is under federal Responsible Government, where there are as many separate bodies of opinion called into being as there are independent spheres of action. It is produced under conditions which give it a potential range of vision stretching as far as the system of governmental activities can at its utmost expansion do, and it is susceptible to impressions as to how everything appertaining to that system ought to be arranged. Moreover, the conditions under which it is formed are favourable to certain first principles of action making their influence thoroughly felt—the principles that all legislative and administrative actions must be regulated by reference to the exigencies of the nation's situation in its entirety, and that all such actions must be so coordinated as to make up together a coherent whole. Those principles tend to carry all the more weight in practice because there is in readiness a standing piece of governmental mechanism for implementing them. As shown at the opening of the Second Chapter the process of implementing either or both of them comes within the average working-capacity of the single set of institutional machinery. Those principles thus have every element necessary to make themselves respected, and in consequence the make of public opinion now in question tends to defer to their authority and to give effect to them. That being so, as soon as a case arises in which the exigencies of the nation's situation are only to be met by some definitive alteration in the existing state of affairs, public opinion will realize the potential bearing that need has upon the whole system of governmental activity, and will see the necessity of regulating by reference to that need all such legislative and administrative actions as can be pressed into the service of helping to supply it. As things are in Australia, a state of facts exists which is on all-fours with the case just put. The more effective occupation of the whole continent is an indispensable step towards the due attainment of the national well-being and safety. It follows from what has been stated that the make of public opinion which unitary Responsible Government evokes must, in the circumstances, tend to show firmness upon the point of having the various subject-matters of governmental activity so dealt with as to cause each of them to contribute—if by any shift it can be forced to do so—towards gaining the end of policy which the nation is concerned, at its peril, to pursue. In uniformly requiring such contribution wherever possible, public opinion is not likely to make the least discrimination between such subject-matters of governmental activity as under the present constitutional system come within the Federal and such as come within the States' spheres of action. To seek to make any factitious discrimination of the sort would obviously be nonsensical or worse. Under unitary Responsible Government, then, public opinion cannot well miss seeing the full force and the general applicability of considerations founded upon the need of a more effective occupation of the Australian continent as a whole, and its ruling tendency must be to give full weight to those considerations in all cases where the nature of the specific governmental act of commission or omission in question allows it. Hence, the second of the two factors referred to above proves to be irreconcilable with the set of conditions that goes along with unitary Responsible

Government. That being so, the possibility of its operating is excluded.

Although the conditions prevailing under a unitary form of polity impress upon the contributors to public opinion that they ought to use the objective standard as far as possible, yet it is by no means certain that they will do so. As a rule, the make of public opinion that comes into being under unitary Responsible Government is more or less diluted by the presence of units of opinion merely moulded into shape by reference to this or that form of subjective standard; and the amount of the dilution at any given moment is something that can only be guessed at. Therefore the most convenient method of gauging the relative degrees of precision attributable to the makes of public opinion available for the purposes of federal and unitary Responsible Government respectively, will be to assume for the purposes of comparison that the latter make of public opinion is the product of an exclusive user of forms of subjective standard. If that assumption be adopted, then it will follow that the practical politician will have had equal facilities for persuading the contributors to either make of public opinion to exchange their superior forms of subjective standard for inferior ones, and there is no ground for supposing that he will not in both cases have been equally successful in doing so. In the ordinary course of things practical politics will thus have become an efficient cause of loss by both makes of public opinion of some of their acumen; and so far as that cause is concerned there is no apparent reason why the process of degeneration should have advanced more rapidly in one case than in the other. On top of that cause there will also have come into action—but not in both cases—a second cause productive of similar effects. So far as regards the make of public opinion available for the purposes of federal Responsible Government, the process of degeneration will have been helped forward by the combined operation of the two factors more particularly referred to in the last two paragraphs, but no such intensification of the process will have occurred in the case of the make of public opinion available for the purposes of unitary Responsible Government. At any given moment the former make of public opinion will thus have degenerated more than the latter make, and in consequence the potential precision of the former make's power of judgement will always be less than that of the latter. That is the result of the comparison, as resting upon the assumed basis that the latter make of public opinion has in it no stiffening due to the presence of units of opinion moulded into shape by reference to the objective standard; or—to put the same thing in another way—when the latter make is taken as at its very worst. In practice, the latter make of public opinion rarely, if ever, falls to so low a level as that. As a rule there will always be found amongst its component units of opinion some that are expressive of the objective point of view, and the more vigorously the nation lives its life the more will these last-mentioned units tend to predominate. Hence, it is safe to conclude that under the circumstances prevailing in Australia the potential precision with which public opinion can discriminate between what is right and what is wrong in matters of government and politics must always prove greater under unitary than under federal Responsible Government; and the superiority of unitary over federal Responsible Government in this respect is a second—and the main—element in the qualitative difference between them.

In the Second Chapter attention was directed to a number of latent differences found to exist between a unitary and a federal form of polity, all having the common feature that in one way or another they have to do with the mechanical efficiency of the operations of government. As then became evident, each of these latent differences betokens the presence of some defect in the apparatus which dispenses government under a federal form of polity—a defect rendering the government so dispensed inferior in quality to that which would normally be procurable under a unitary form of polity, supposing all other things were equal. Out of the above number of latent differences, one—being the one dealt with at the opening of that chapter—resolves itself into that quantitative difference between the two forms of Responsible Government which has already been discussed and for the moment may be passed over. The others of the above number of latent differences—to repeat what was stated before—are not quite on the same lines as the one just referred to, and they also appear to be not of quite the same importance. But unless the defects which they signalize in the apparatus of governmental mechanism available for the purposes of federal Responsible Government are all taken into due account, no comparison between unitary and federal Responsible Government can even purport to cover the whole ground. It remains, then, to pass this collection of minor defects under review in order to get some idea as to the nature of the adverse influence which they can respectively exert upon the working of federal Responsible Government.

One of the inherent defects of the apparatus of governmental mechanism which are now in question is its occasional liability to temporary and partial breakdown. If a situation which the nation has to face is complicated by the existence of a doubt as to which set of institutional machinery—Federal or State—is competent to do what is necessary in order to meet the whole requirements of the situation, the effect of the doubt resembles that which would be produced by a sprag so inserted in some of the wheels of government as to stop them from revolving. For instance, suppose that all thinking persons are agreed as to what measures are best adapted to cope with some untowardly development in the general position of affairs, but that withal there prevails a pronounced feeling of uncertainty as to whether the power to adopt these measures is vested in the Federal or in the State sets of institutional machinery. The prevalence of uncertainty on the point suggested cannot but tend to deter all the respective sets of institutional machinery from making any move. If, at last, the public shows signs that its patience is on the verge of being exhausted because of the continued indecision and inaction, there is then more likelihood that some one or other of the sets of institutional machinery will incur the risk of making a move and venturing upon the plainly desirable measures; and when that stage has been reached, the first step can be taken in the process whereby the point of law involved can be brought to a decision. But until that stage has been reached the nation must all the time virtually lack the means of getting those things done which are obviously essential in its interests. In certain events and for certain purposes, then, the apparatus of governmental mechanism is liable to become jammed and to be thrown out of gear during a period whose length will depend upon circumstances. When such an accident happens, as it is sure to now and then, the nation must bide the while as if crippled in one or more of its normal powers of action. A second of the inherent defects of the apparatus of governmental mechanism which are now in question is that the nation is never safe from finding itself more or less completely maimed as regards dealing with particular subject-matters of governmental activity. When the dividing line between the Federal and the State spheres of action has once been laid down, the logic of events may afterwards prove that this or that function of sovereignty has been given a place on one side of the line, whereas it ought in reason to have had its place on the other. Whenever such a mistake has been made, the power to take legislative and administrative action in respect of the subject-matter of governmental activity, as so misplaced, will have fallen into the wrong hands, and cannot be exercised therefore to the best advantage of the nation. The consequences may well go much farther than that. As shown in the Second Chapter, the power to regulate trade unions has been committed to depositaries so ill-qualified to exercise it that the nation is little better off than if the power did not exist at all. In all cases where power to take legislative or administrative action in respect of any subject-matter of governmental activity has been lodged elsewhere than in the right hands, the nation must labour under some disability as regards getting those things done which in that connexion the national interests require. The full extent of the disabilities from which the nation is liable to suffer on the above account is, it may be added, a matter not knowable all at once, for the future must have a share in determining it. A third of the inherent defects of the apparatus of governmental mechanism which are now in question is that it allows each of the component sets of institutional machinery to act as if existing simply for its own sake. What these sets ought in principle to strive for can in no case be expressed in self-explanatory terms of the nation's natural objective. The result is that there is no set but feels itself free to abandon the single-minded pursuit of that one objective and to give itself over to the quest of other things. In consequence, they are none of them prepared to recognize that the sole reason for their being is to serve, so to speak, as instruments for the attainment of the national well-being and safety; and therefore the will to serve as such instruments is something that normally is not to be found in them. It is idle to expect, then, that in practice they will prove themselves efficient as such instruments. On the contrary, their engrained tendency is towards courses of action which, viewed in their relationship to the attainment of the national well-being and safety, must for the most part appear erratic; and, to use the term in its primary sense, eccentric. Dread of public opinion (if the latter is sufficiently on the alert) can no doubt influence the behaviour of each set of institutional machinery in this respect and impose some check upon it. But no such external force can go to the root of the mischief and cure what is really a fault in the mechanism itself—lack of a fixed intent and formed purpose in regard to the attainment of the national well-being and safety. Within certain limits that vice must, in spite of outside pressure, tend to assert itself and to increase in a corresponding degree the average margin of error in each of the separate systems of governmental activities. That defect tells against the measures of government being generally well directed.

The inherent defect to be next touched on tells against those measures being generally well executed. In virtue of this defect the apparatus of governmental mechanism has no power of itself to create a favourable atmosphere for the administration in detail of measures of government expressive of the nation's sovereign will. Each of the seven sets of institutional machinery is strong enough to go its own way but it is not strong enough to draw the mass of those affected by its workings in a solid body after it or make them feel the necessity of rallying to its support. The normal attitude of the public at large in every sphere of action is to regard the system of governmental activities going on therein as being the concern of a body of functionaries whose supposed duty is to be self-sufficing and to accomplish their official tasks without aid from outside sources. Hence, except in a few very special cases, those functionaries have little or nothing to back them up over and above the powers to reward and punish, and they find themselves handicapped by having to wrestle with difficulties which need never have arisen if more of the spirit of public service had been abroad.

When those inherent defects which have been passed in review as above are regarded as a whole, there appears to be much dissimilarity between the two pairs into which they are roughly divisible. The first pair of them make their influences felt at irregular intervals, whilst the second pair exert influences which are continuous and persistent. The first pair can prejudice the nation in some of its normal powers of action, the second pair in all. The process of amending the written Constitution may—at least in theory—be resorted to in the case of the first pair for the purpose of mitigating the symptoms whilst leaving the disease untouched, but no imperfect palliative of that sort offers itself in the case of the second pair. Furthermore, public opinion is of no avail to counteract the first pair, whereas if it presses strongly enough it can do something towards keeping the activity of the second pair within bounds. Taken all together, then, these defects are so heterogeneous that there is no possibility of generalizing about them except in the widest terms. To put the matter very broadly, one and all are factors adverse to good government—factors, each after its own fashion, doing something to diminish the potential efficiency of federal Responsible Government as a means of furthering the attainment of the national well-being and safety. No such factors need be reckoned with in connexion with unitary Responsible Government because the apparatus of governmental mechanism then in use is wholly free from such defects as those reviewed above. Hence, the existence of these defects in the one case and their non-existence in the other is a third element in the qualitative difference between the two forms of the system of Responsible Government.

The existence of both the quantitative and the qualitative difference between unitary and federal Responsible Government having now been established and explained, there is no longer much difficulty in answering the question upon which, as suggested in the First Chapter, the whole matter at issue in the present inquiry can for practical purposes be made to turn—the question, that is to say, as to what bearings the combined latent differences between a unitary and a federal form of polity must have upon the potential efficiency of the system of Responsible Government regarded as a means for ensuring the attainment of the well-being and safety of the Australian nation. It appears—to take the three elements in the qualitative difference first—that one cause of differentiation between unitary and federal Responsible Government is that under the former the state of the nation can, and under the latter cannot, be appealed to for the purpose of determining whether the depositaries of legislative or administrative powers have duly discharged their functions. Hence it is under the former that the principle of responsibility can offer the better guarantee that in the discharge of those functions nothing will be done or left undone against the true interests of the nation. Another cause of differentiation is that the public opinion which provides unitary Responsible Government with its system of reference is not of the same make as the public opinion which fulfils the like office under federal Responsible Government. A close examination of the two in comparison with one another shows that the former make is of the greater potential precision in discriminating between what is right and what is wrong in matters of government and politics; and therefore it is under unitary Responsible Government that public opinion will on the average be the more sound and more sure reflex of the nation's instinct of self-preservation. A third cause of differentiation is that under the federal form of the system the apparatus of governmental mechanism employed is liable to develop in practice a variety of faults from which the single supreme set of institutional machinery employed under the unitary form of the system is quite free; and as these faults are due to the structure of the apparatus of governmental mechanism itself, no pressure from public opinion can eradicate them, or, except to a minor extent in certain cases, obviate their consequences. A fourth cause of differentiation—and this is where the quantitative difference comes in—is that the apparatus of governmental mechanism under unitary Responsible Government has, and under federal Responsible Government, generally speaking, has not, adequate power to make all governmental activities within the nation's frame proceed in pursuance of some definite plan. Under unitary Responsible Government it is always possible so to regulate the intended results of all such activities that when combined together they may form that sort of whole which is required in order to minister to the attainment of the national well-being and safety. Under federal Responsible Government nothing of the kind is possible except to a very limited extent. The separate Governments might, no doubt, if they were so disposed, lay everything else aside in order to achieve unity of policy and unity of action in isolated cases; but it is not within the bounds of reasonable supposition that for any such purpose they would be prepared to put forth extraordinary efforts often or on any large scale. Hence, under federal Responsible

Government the sort of whole which will be formed by the gross results of all governmental activities within the nation's frame, and the bearing which the sort of whole so formed will have upon the attainment of the national well-being and safety, are matters which must as a rule depend in the last resort upon the arbitrament of chance. Even under unitary Responsible Government the control which the apparatus of governmental mechanism can exercise over the gross results of all governmental activities within the nation's frame must fall short of being complete. For obvious reasons there may easily be more or less variance between those results as originally intended and as they actually accrue. But though the power of controlling the results must of necessity be imperfect, yet it cannot exist at all without giving every one to understand that it is a power which in the national interests ought to be exercised to the best possible advantage. It comes about quite naturally that public opinion can get into the way of bringing the gross results of all governmental activities within the nation's frame into focus together, and can attach due importance to the requirement that the sort of whole formed by those gross results in combination shall be such as to keep the nation moving towards its natural objective. Such a broadening of public opinion's outlook can make its influence felt in practice because of the action of the principle of responsibility, which tends to ensure that those at the head of affairs will attach to the above requirement no less importance than public opinion does, and will try to adjust their scheme of policy accordingly. Under unitary Responsible Government, then, there is not only the requisite institutional machinery, but there can also be the requisite motive power for making all the operations of government proceed approximately along lines which have been advisedly laid down beforehand; and, that being so, the nation finds itself master of the means of ordering all its goings intelligently. With those means at its command it can prove itself possessed of adaptability to its ever-changing circumstances. An opposite state of things prevails as a rule under federal Responsible Government. In that case the apparatus of governmental mechanism is left without adequate power of control over the general tenor of the gross results of the governmental activities carried on under its auspices. That being so, the nation remains disabled from regulating all that goes on within itself in the manner which its intelligence would otherwise dictate —a disability which must tell against it as it labours to hold its own in the struggle for existence.

In the list of causes of differentiation already set out there is none which can operate in favour of federal as opposed to unitary Responsible Government. They one and all have a common tendency to detract from the comparative efficiency of the former in relation to the attainment of the national well-being and safety. In view of the cumulative effects of all of them together there can be no escape from the conclusion that whatever superficial resemblances there may be between the two forms of the system, yet, in the measure of their ability to subserve the purpose for which they both exist, they are not one system but two distinct systems. When the present federal form of polity was adopted in Australia 'Responsible Government' became in truth as ambiguous an expression as 'public opinion' has already been shown to be. There is fallacy therefore in arguing, as many still are prone to do, that because Responsible Government has proved a success in the case of the British nation constituted as it is upon the unitary principle, it must consequently prove as successful in the case of the Australian nation whilst constituted as now upon the federal principle. To engraft the system of Responsible Government upon a federal form of polity is in truth to denature the system and to cause the virtue to go out of it; and if it be conceded, as it must be, that priority of invention and use gives unitary Responsible Government the right to be esteemed the original and genuine form of the system, then the sum of the matter seems to be that federal Responsible Government is nothing but a spurious and colourable imitation of it.

CHAPTER V

AUSTRALIAN FEDERALISM IN THE LIGHT OF ENGLISH CONSTITUTIONAL HISTORY

ENGLAND—or to be literally exact what is now England—has been the scene of more than one attempt to solve the problem of how to constitute a social organism so that it may keep itself whole and stand the test of time. These attempts, if they had no other unity about them, had at least substantial unity of place, and there seems to be nothing incongruous or far-fetched in regarding them as so many applications of the method of trial and error in order to reach a workable solution of the above problem, formidable as the fabled riddle of the Sphinx. As these experiments—three in number—were actually tried they are well worth recalling, because of their bearing upon the question whether Australia ought to exercise the option duly reserved to it of altering its present federal form of polity into a unitary one.

The first of these experiments was tried by the people who in accordance with long established usage may be called the Celts (although doubts have arisen of recent years whether that description of the whole population may not be too sweeping). The Celts' attempt at an empirical solution of the problem was at its best when, subsequently to the Roman régime, they had recovered their country and their freedom of action. The result of this experiment was that the Celts of South Britain lost the better part of their country to the Anglo-Saxons. (As England only began to be English where the Celtic experiment left off, to speak of the latter as having occurred in England or as having formed part of English constitutional history involves something of a solecism; but in view of the need of terseness in the title to the present chapter the enforced looseness of such expressions may possibly be condoned.)

The second of the three experiments was made by the Anglo-Saxons, whose attempt was at its best when the

Wessex dynasty had extended its rule over all England, that is to say about the middle of the tenth century. The result of this experiment was the break-up twice in succession of the Anglo-Saxon social organism. The third of the experiments was tried by William the Conqueror when in pursuance of the Norman Conquest he reorganized the realm of England and moulded the body politic into such a shape as to permit of its evolving along the lines which led in course of time to the development of the present British Constitution.

Two of the experiments failed and the third was thoroughly successful.

At the dawn of written history those parts of Great Britain which afterwards got the names of England, Wales, and Strathclyde were in the possession of the Brythonic branch of the Celtic race, whilst everywhere else within the British Isles the other—the Goidelic—branch of that race seems to have been in the ascendant. The Brythonic Celts had been in possession of their territories for several centuries before Claudius the Roman emperor made his invasion. Thus they had had the time to absorb the remnants of such racial stocks as had preceded them in the land. Hence, on the eve of the Roman Conquest there was unity of race, unity of language, unity of custom, and unity of religion—the Druidic religion—throughout the area held by the Brythonic Celts. The fact that these Celts had so much in common did not find expression in or determine the current form of their social organization. They were split up into a number of tribes which were as a rule independent of one another, the tribes acknowledging the hegemony of the Catuvellauni being the few conspicuous exceptions. The lack of cohesion amongst the tribes was remedied to some slight extent by the awe in which they stood of the Druids—a priestly corporation whose influence was supreme not only in the sphere of religion but also in connexion with sundry matters nowadays regarded as being of a secular nature. The Romans suppressed the Druids and subdued the tribes in South Britain, but they were not inimical on principle to the perpetuation of the tribal system, at least in the rougher parts of the country. What the higher authorities at Rome required, and for the most part eventually obtained, was that the tribal chieftains and nobles should use their hereditary powers over the tribes in such a way as to further the aims of Roman policy, becoming on their parts, so to speak, cogs in the machinery of provincial administration. In accordance with these views, some ten or twelve tribes were left in possession of their ancestral tracts, each grouped round some country town where the head-men of the tribe met in council for the transaction of business connected with the local government of the tribal area or canton. This state of things prevailed, it seems, in by far the larger part of the country. In the residue of it—that is to say, in the lowlands of the South and East—many thriving cities were planted, and some of them reached the dignity of centres of local government entrusted as such with jurisdiction over considerable districts round them. In this smaller half of South Britain the tribal organization of society passed into the limbo of half-forgotten things, and the Celtic inhabitants, thrown into the melting-pot of Roman civilization, emerged from it at least in semblance thoroughly Romanized. South Britain remained under Roman tutelage for about eleven generations. Then the Roman régime flickered out at some date which is imperfectly known but which must have been quite early in the fifth century. Premonitory symptoms of the approaching collapse began to show themselves, however, towards the close of the fourth century. In the period A.D. 377–88 disaffection grew so rife amongst the Roman troops then stationed in South Britain that, taking advantage of it, one Magnus Maximus started off at the head of an expeditionary force to make his bid overseas for supreme power in the Empire of the West—not without some success. In the period A.D. 407–11 there were fresh mutinies in the Roman army in South Britain. The result of them was that the army, having on the strength of his auspicious name selected as its commander-in-chief a private soldier called Constantine or Constantius, took itself off in a body to follow in Magnus Maximus' tracks. From this stage onward it may reasonably be surmised that there were not sufficient regular troops left in South Britain to protect or police it properly. Meanwhile, the communications with Rome were becoming more and more precarious until in the end they were completely cut. Officials who remained at their posts thereupon found that their requests for instructions from Rome no longer received answers, and that when their appointed terms of office were drawing to a close no successors were arriving on the scene to take over their functions from them. In some such way, then, the institutional machinery of the Roman régime ran down until at last it came to a dead stop. When it stopped, the political unity of the country as expressed and impressed by it became for all practical purposes defunct. Worse was to follow. The piratical descents to which the South and East coasts of the province had for generations been exposed—so much so that special arrangements had long ago been made for the defence of the so-called Saxon shore—not only grew more and more frequent but also began to change their character. Instead of being tip-and-run dashes at plunder they developed into reconnaisances in force; and they proved to be the precursors of a series of raids which ravaged the more civilized parts of the country in as unsparing a fashion as in later ages William the Conqueror was to ravage the Northern counties of England and Louis XIV of France was to ravage the Palatinate. It is quite possible that what is known to have been the studied purpose of each of the two later wastings may also have been present in the first-mentioned one. At any rate the result was quite similar. A protective zone of desolation was created, under cover of which the Saxons, the Angles, and the Jutes were able to proceed securely with the foundation of their infant colonies. As to the Romanized Celts they became a negligible factor in the future history of the country, and such of them as were not done to death or reduced to slavery either fled for shelter to the remoter parts of the country or else passed overseas to settle themselves in what is now Brittany. As to the Celtic tribes in their cantons, the march of events had made them all again formally independent of one another; but even so, the enemy colonies springing up under their eyes were a standing warning to them that there was only one course which they could prudently adopt. If they valued their own safety they were bound to revise their tribal form of social organization so as to restore to their country the political unity that it had recently lost. In default of that there would be no institutional machinery extant to enable them to put forth with all their might combined and sustained efforts for the purpose of uprooting the threatening settlements before they had grown too strong. It was not hard for these Celtic tribes to get a good idea of the sort of governmental mechanism required to meet their urgent needs. Something like it had been in constant action under the vanished Roman régime, and had become familiar to them as part of the then established order of things. If they cared to carry their memories further back to the seven-year period—A.D. 286–93—when Carausius had governed South Britain independently of Rome they might have found almost exactly in point a precedent whose principle might have been easily and safely adapted to their own case. Moreover, the means of giving effect to some such precedent were available for use. By the end of the fourth century the ancient British Church had become a fully organized body, with its bishops and its synods. 'The episcopal synods were the only councils that could pretend to the weight and authority of a national assembly. In such councils where the princes and magistrates sat promiscuously with the bishops the important affairs of the state as well as of the church might be freely debated.'[1] At the epoch now in question the Anglo-Saxons were heathens to the core and the episcopal synods would no doubt have given whatever help they could in the matter all the more eagerly on that account. Furthermore, the Celtic tribes were not hard pressed for time to complete the process of reconstituting themselves in the manner which their circumstances imposed. The traditional date of the foundation of the first of the hostile settlements—that of the Jutes in Kent—was A.D. 455; and the strategic position of the Celts does not appear to have become critical until A.D. 577, when their Southern front gave way at the battle of Deorham in Gloucestershire and the invaders broke through to the Bristol Channel. It was only after the battle near Chester in A.D. 613, which enabled the enemy to reach the sea at a new point somewhere in the neighbourhood of the mouths of the Dee and the Mersey, that the military situation of the Celts can be said to have become desperate. The Celtic tribes thus had a full century and a half to draw together again into some form of political unity before ruin overtook them. It appears that they did indeed move some little way towards greater solidarity. Gibbon (in a passage following almost immediately after the one quoted above) says: 'There is reason to believe that in moments of extreme danger a Pendragon or Dictator was elected by the general consent of all the Britons.' The intermittent workings of this occasional piece of institutional machinery do not seem to have exerted much influence in the sphere of things of the spirit. They did not for instance educate the Celtic tribes up to husbanding their man-power for their country's sake. There is satisfactory evidence that with the Anglo-Saxon peril staring them in the face they sometimes indulged in feuds and fought with one another. There is also satisfactory evidence that during the reign of Anthemius, emperor of the West (A.D. 467–72), Riothamus, who presumably was a tribal chieftain in South Britain, raised there an expeditionary force of 12,000 men for the Imperial service in Gaul and took them away with him overseas to the Loire. That such things should have been possible on the side of the Celts whilst involved in a life-and-death struggle indicates that the tribal system of social organization failed to produce amongst them that state of thought and feeling which was necessary to make them give themselves up to the task of saving their country and concentrate upon it as if they were one man. It was seemingly to retrieve the worst consequences of this failure that the experiment of the Pendragonship was tried. Little or nothing is known about that office except the name, but it possibly may have amounted to a spasmodic application of the unitary principle of social organization. It represented no doubt the utmost length to which the overwhelming force of circumstances could push the Celtic mentality—a mentality which, reviving upon the breakdown of the Roman régime, seems to have gone back to its original tribal outlook and to have resumed its old habit of thinking in terms of the tribe and not in terms of the country or the nation. At the very most the Pendragonship can hardly have been more than a temporary cure for chronic ills, and as such it did not go as far as the rigour of the times required. As no definitive decision was reached in the deadly conflict until it had lasted a full century and a half, the contending races must have been all but evenly matched. Not much of a makeweight could have been needed to turn the balance of the scales. Hence if before it was too late the Celtic tribes had been wise enough in their generation to strengthen their position by reconstituting themselves permanently upon the unitary principle there is a legitimate presumption that they would have secured an ultimate decision in their own favour. As it was, they clung to the tribal system of social organization with or without modifications. That seems to have been the main cause of their undoing, and the loss by them of England may reasonably be imputed to it.

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[1] Gibbon, *Decline and Fall of the Roman Empire*, c. 31.

The Anglo-Saxon colonies in England eventually crystallized into the independent kingdoms of the so-called Saxon Heptarchy, and a long series of interactions between those kingdoms, generally by methods of violence, caused them to be rounded up into three larger agglomerations: Wessex in the wider sense on the South, Northumbria (which went some way into what is now Scotland) on the North, and Mercia in between them. Whilst this tripartite division of the country held good, the Danes, a fresh swarm from the great Northern hive of migrant races, descended upon England and established themselves as masters in much of Northumbria and Mercia, the entire tract thus settled by them getting the name of the Danelagh. Upon Wessex they spent their energies in vain. That State was fortunate in its kings, amongst whom Alfred the Great had most to do with saving it from being overwhelmed. Under his auspices the existing order of things was modified in suchwise as to get together the means for a more efficient system of defence, and in the result the military strength of Wessex rose to a pitch which allowed the Wessex dynasty to undertake, as soon as the Danish crisis was over, the enterprise of subduing the rest of England and of establishing its own supremacy through the length and breadth of the country. In A.D. 973 Alfred's great-grandson Edgar, who then had been for some years on the throne, was with the utmost solemnity crowned and anointed as the sole representative of the threefold sovereignty of Wessex, Mercia, and Northumbria. That event may be taken to have signalized the perfecting of the pacification of England under the Anglo-Saxon kingship. When the conquest of Mercia and Northumbria was achieved they were marked off into shires and then into hundreds (which latter were in the Danelagh called *wapentakes*) so as to conform to the plan of organization for governmental purposes which had long been in force in Wessex; and when uniformity had thus been obtained in the method in which England was parcelled out there followed an expansion of the Wessex constitutional system so as to embrace the whole country in the scope of its workings. The most salient feature of that system was the narrowing-down of the recognized competency of the king, whether acting with or without the counsel and consent of the *witan*. To sum up his position in modern phraseology he was the depositary of the executive power, but only to a very limited extent was he the depositary of either the judicial or the legislative power. The function of administering justice both in civil and criminal cases was wont to be discharged by the communal courts of the hundred and the shire; and according to some authorities in actual practice the exercise of the function was delegated in the former court to the twelve senior *thegns* of the hundred, and in the latter court to the twelve senior *thegns* of the shire. The hundred-court had jurisdiction in the first instance over most if not all causes arising within the district controlled by it, and the judgements given in its name were in certain events liable to be reviewed by the shire-court, whose decisions were in theory final and conclusive. The king might intervene in cases where there had been a wilful denial of justice to a litigant party, but it was contrary to the spirit of the system for him to entertain what were merely appeals in the modern technical sense of the word. Certain laws passed by Edgar seem to indicate a conviction on his part that this method of administering justice was not what it should be. By one of his laws he appointed the *ealdorman* or, as called in the Danelagh, *jarl* and (Church and State then being one) the bishop doing duty within a shire to be *ex officio* members of its shire-court. The object of this ordinance seemingly was to secure the presence on the spot of official personages who could speak with authority as to what was the state of the secular or ecclesiastical law governing the respective matters coming up before the shire-court for adjudication, and thus to do something towards steadying the action of that court. By another law Edgar promised to give redress to any person to whom justice had been denied in the communal courts. It is not known how much effect was given to this law in practice. It may have been interpreted as granting an unlimited right of appeal to the king. But if so, it was not followed up by the creation of any regular tribunal in the nature of a general court of appeal; and in the absence of some such means of keeping the communal courts under constant pressure there is hardly likely to have been much abatement in the independence of their action. Edgar's laws probably went as far as under the circumstances it was safe for them to go. But they did not go far enough to make the king the central figure in the picture or to cause people to fix their eyes upon him as the real fountain of justice. In spite of all the implications that could be spelt out of these laws, they still left men free to view the administration of justice as being what it always had to their knowledge been, a matter of essentially local concern; and to continue as they had ever done to identify the organized shire as the true and only depositary of the judicial power. As to much the greater part of the law administered by the communal courts, it was not in any way connected with the kingship but was of an origin quite independent of it. It consisted in folk-right—the entire body of unwritten customary law accepted as being of binding force within the shire. There were variances, details of which are rarely extant, between the folk-rights of Wessex, Saxon Mercia, and the Danelagh; and the localization of the administration of justice must in the ordinary course of things have tended to make for the further differentiation, as regards folk-right, of all the shires from one another. By the combined operation of both causes together, the customs prevailing in the local courts became so many, so various, and so confused that to put them in writing would have been impossible. So said Glanvill in the reign of Henry II. But however much the systems of folk-right enjoying full faith and credit in the respective shires may have disagreed, they all had in common the property of being, so to speak, autochthonous and of owing none of their authority to the initiative of the kingship. In addition to the folk-right, as formulated and applied by the communal courts, the latter were also bound by certain sets of written laws promulgated with the counsel and consent of the *witan* by three or four of the kings, from Alfred onwards. But the total amount of legislation of this nature was extremely small. The exercise of the legislative power by Anglo-Saxon kings was an extraordinary event and as a rule was held in reserve for very special circumstances. (Canute's laws stand on a somewhat different footing.) Thus, as a high authority says: 'The codes of Alfred and Edgar are the legislation which the consolidation of the several earlier kingdoms under the West Saxon house demanded, the former for Wessex, Kent, and Mercia, the latter for the whole of England.'[1] Edward the Confessor was on the throne for twenty-four years, during which period the administration of public affairs was all in disorder: and it is a highly significant fact that there is no trace of his ever once having had recourse to this legislative power with a view to setting matters right. Law-giving by the Anglo-Saxon kings was to all intents and purposes a minor factor in the life-history of the nation, and though on occasions additions were thus made to the prevailing systems of folk-right, yet there was no machinery by which the communal courts could be compelled to bear them in mind—a state of affairs which the appointment of the *ealdorman* and the bishop to the shire-court may have somewhat tended to improve. Under the Anglo-Saxon form of polity, then, the organized shire was the main depositary of the judicial power, and (so far as substantive alterations in folk-right were effected by the course of the communal courts' decisions) of the legislative power, the king's sphere of action in connexion with the exercise of those powers only overlapping to a slight extent the sphere of action of the shire. Matters standing so, there seems at first sight to be nothing unreasonable in the theory that the Anglo-Saxon constitutional system was a federal one, the overpowering force of custom doing what in other cases of federalism is generally done by a written constitution, that is to say, stabilizing the dividing lines between the respective spheres of action and preventing them from shifting. This theory, however, cannot be reconciled with the fact that Edgar started and his successors continued the practice of granting away into private hands the jurisdiction of the hundred-court over particular tracts of land, nor can it be reconciled with the fact that the kings of Wessex had no sooner made themselves kings of all England than their potential sphere of action began to grow at the expense of the organized shires just as they did on the other side at the expense of the *witan*. The true view of the matter seems to be that the Anglo-Saxon nation as from Edgar's date was constituted upon the unitary principle of social organization, but that that principle was imperfectly applied—so imperfectly applied that some of the results of the working of the constitutional system differed little if at all from those normally distinctive of a federal form of polity. One of the results was the non-development of a general sense of the moral unity of the kingdom. The nation never drew itself together nor felt itself really one. This result cannot be attributed with much show of plausibility to the presence in the Danelagh of a population of Danish descent. The Danes in England, just as in Normandy the Normans, the latter being to a large extent their blood-brothers, were an eminently adaptable people. To start with, they were of kindred race to the Angles amongst whom they had settled, and it could not have been hard for them to accommodate themselves to their new neighbours and surroundings. They embraced Christianity, took to speaking Anglo-Saxon, produced men who could duly discharge high offices in Church and State (Oda, for instance, a full-blooded Dane, became Archbishop of Canterbury), and in general were quite prepared to take things as they found them under the Anglo-Saxon kingship. So much so that in the war of national independence against Sweyn and Canute, kings of Denmark, it was the Anglo-Danish shires of the North and East which held out longest for the Wessex dynasty and in the last phase of the struggle supplied Edmund Ironside with the bulk of his forces. Hence, about the middle of the tenth century there was in England substantial unity of race, language, and religion, as well as political unity; and if under such conditions the Anglo-Saxon form of polity failed, as it did, to bring about national cohesion, the fault must have lain in the form of polity itself. In effect, it segregated those living under it into distinct territorial groups or shires each of which was, subject to occasional and restricted acts of intervention on the part of the kingship, virtually self-contained. The shire was an organized unity whose members had to a considerable extent common rights, common duties, and common interests. It did for them most of the governing that fell to their lot, and it loomed large in their eyes because the law regulating their relations with one another was in the main what the shire by its local courts said it was, and because those courts were the chief fountains of what was thought in the shire to be justice between man and man. The governmental activities of the shire thus produced, where it did not already exist, a corporate self-consciousness amongst its members, and the many points at which their daily lives were touched by those activities made their sense of being identified with the shire proportionately strong. On the other hand, the inhabitants of the shire were seldom brought into direct contact with the kingship. The latter as a rule acted upon the shire and the shire in its turn acted upon its members. The king could take little or no action on behalf of the nation without adding to the number of points at which the governmental activities of the shire entered into and affected the lives of its members and without further strengthening the hold which the shire previously had upon them. That was so, for instance, when the king called out the *fyrd* or militia. The militia was organized upon the basis of the shire as a separate entity. The contingent supplied by a shire formed a distinct unit serving under the command of the *ealdorman* or *jarl* who answered to the king for the shire or, if an *earl* had been appointed to exercise the executive functions of the kingship in and for that and other shires, then under the command of the *earl*. The conditions under which the militia man served never ceased to suggest to him that he was fighting in his capacity as a member of his shire and not in his capacity of a member of the nation. Thus he was left free to draw the inference that he was bound to obey the orders of the shire-official placed over him, no matter what those orders might be. How far the average member of a shire when on active service was imbued with the idea that his duty was towards the shire and not towards the kingdom as a whole is illustrated by an incident in the war of national independence against the kings of Denmark. The loss of that war was largely attributable to the manifold treasons of Ædric Streona, *earl* of Mercia—treasons which culminated at the battle of Assandun in Essex, when he deserted to the enemy and carried over with him bodily the shire-levies from his part of Mercia, and also—what is still more significant—shire-levies from Wessex, they being commanded by shire-officials who were his accomplices. The shire-levies generally had about them little or nothing of the professional soldier or of his disciplined self-suppression. They mostly consisted of farmers under arms, with their civilian mentalities intact. If, then, in such an extreme case as the above the shire-levies were ready to do as the officials of their shires bade them, the prevailing tendency amongst the rank and file must have been for every one to put his shire first and let the matter rest at that. Under the Anglo-Saxon form of polity, indeed, men in the mass could see the shire coming into direct contact so much with their daily lives and the kingship so little, that on their parts they could not but attach more importance to the doings of the former than of the latter. When they had to think, feel, or act about matters of government they did so as a rule in their capacity as members of a shire, and as an exception in their capacity as members of the nation. The force of almost unbroken mental habit thus worked to quicken their sense of membership of a shire and to deaden their sense of membership of the nation. In consequence the pull of shire upon them normally proved stronger than that of the kingship or nation. In practice, the shire system hindered the Anglo-Saxons from growing nationally-minded. They had almost everything to produce solidarity amongst them except a well-diffused and well-developed sense of being one nation. The absence of such a sense was something for which not even outside pressure could thoroughly make up. No crisis in their national destinies, however acute, found them prepared to a man to act steadily together. In the two wars which they vainly fought during the course of the eleventh century in defence of their national independence they consistently failed to bring all their weight to bear at the decisive moment and at the decisive spot. One result, then, of the imperfect application of the unitary principle of social organization amongst the Anglo-Saxons was to keep their national self-consciousness subnormal, as judged by the standards now obtaining in the West of Europe. Another result was to allow room for defective co-ordination between the actions of the kingship as representing the nation and those of the shire-courts as representing the shires. If the king, with or without the counsel and consent of the *witan* (as the nature of the occasion might require), promulgated some legislative ordinance or administrative decree, he had no sufficient means of dealing summarily with any shire-court which failed or neglected to give effect to it. If, for example, he issued a new law which overrode in some point the pre-existing custom of a shire, the only means he had of making the shire-court respect the new law was moral suasion as applied by the *ealdorman* and the bishop who as already said were *ex officio* members of the court. The shire-court might be so firmly wedded to the custom of the shire upon the point in question as to show a strong disposition to resort to shifts and evasions in order to avoid the necessity of countenancing the supersession of it. When things were taking that turn, as in all probability they sometimes must have done, moral suasion could have but proved utterly futile to save the new law from becoming a dead letter so far as regarded the shire concerned. Again, the king might publish his considered decision as to what was to be done about this or that administrative matter so that there might be more efficiency in the exercising of his executive power; but in many, if not most, cases it would still rest with the shire-courts to take the necessary consequential action as desired. The shire-courts were responsible to the shires and not to the king, and for that reason they naturally leant towards regarding the king's instructions from the point of view of the interests of the respective shires and not from that of the interests of the kingdom as a whole. They were so strongly entrenched as the concrete embodiments of the juridical independence of the shires that there was not the least danger that the king would ever venture to seek their abolition; neither, to speak broadly, were their members liable to dismissal by the king. The shire-courts were therefore in a position to brave his displeasure if they did otherwise than manage his affairs in accordance with instructions. Moreover, the very atmosphere which they breathed when engaged in dispensing the justice of the shire must have tended to make them awkward instruments for the execution of the king's will in administrative matters. Trained to revere custom and precedent, they cannot but have been predisposed to obstructiveness when directed to do something that to their knowledge had never been done before or never been done before in the precise way there and then prescribed. Taught, too, to rely upon their own powers of judgement, they were little likely to render unquestioning obedience when required to proceed in a manner inconsistent in their view with the interests of their respective shires. The conditions under which the shire-courts transacted the king's business for him were thus quite unfavourable to the display of due diligence on their parts, and the king's service must often have suffered in consequence. That the king needed help of some sort in order to get the shire-courts to do their work on his behalf properly, is evidenced by the fact that Canute (who, with Denmark at his back, had in England far more of the reality of power than was ever enjoyed by an Anglo-Saxon king) found it nevertheless inexpedient to do away with the pre-existing system of having high officers called *earls* to supervise groups of contiguous shires in administrative matters. The only modification which Canute is said to have made in the system was to reduce the number of *earls* to four. Both on the legislative and the administrative side of the governmental activities of the kingship the same sort of hitch was liable to recur. The king, with all the authority belonging to him as head of the nation, might ordain what ought or ought not to be done, but the shire-courts might go their ways as if these expressions of his will were not necessarily binding upon them; yet they might fare little the worse in consequence. As a remedy for such a state of things, some persons of the present day, thinking of the subsequent Court of King's Bench and of the important part played by it later on in England's administrative system, might possibly be inclined to suggest that what was needed was the creation by the Anglo-Saxon kings of a central tribunal competent to order the shire-courts to correct whatever should be found to be amiss in their doings, and to visit them with legal penalties if they treated its orders with contempt. But it is to be borne in mind that the Court of King's Bench, of which the suggested tribunal, if established, would have been the precursor, partly owed its successfulness to the adoption of 'institutional rule' (so to term it) under which the final determinant in the exercising of the Monarchy's judicial, legislative, or executive power consisted not in the personal will of the King, but in what ought under the circumstances to have been his will: or, rather, in his constructive or official will as formulated by the institution entitled to do so in his name. More will be said below as to the conditions which rendered the constitutional evolution in the above direction possible. At present it is enough to say that there were no signs in Anglo-Saxon times of any constitutional evolution in such a direction. As a matter of fact there were then signs that the constitutional evolution was proceeding in exactly the opposite direction. When Wessex stood by itself its constitutional system, as regarded the kingship, provided for the subordination of the personal will of the king to the collective intelligence of the whole community as represented by the *witan*—a body then so composed as to have the power of independent judgement. Most if not all of the king's governmental acts, however otherwise legitimate, required for their validity the approval of the *witan*. After the kings of Wessex had become kings of all England the composition of the *witan* underwent changes which enabled the king to be sure of having in it a working majority of personal retainers, so that the king, not the *witan*, was in control. Thus the *witan* became a mere screen under cover of which the king could discharge his functions as he pleased, and the crude form of institutional rule which had served Wessex so well was completely ousted by a veiled form of personal rule. The foregoing observations as to the difference in the directions which constitutional evolution took before and after the Norman Conquest make it clear that from the middle of the tenth century onward the establishment in Anglo-Saxon England of a central tribunal anticipating the later Court of King's Bench would have been contrary to the general trend of events and to the whole spirit of the times. When Edgar settled the lines upon which all England was to be governed, he showed not only by what he did but also by what he did not do that he contemplated personal rule by the king in the fullest acceptation of the term. For instance, when, as already said, he did not follow up his legislation on the subject of appeals from the communal courts by organizing a regular court for the hearing of appeals, his intention could only have been that they were to be heard by the king himself. Any central tribunal—such as the Court of King's Bench afterwards was—for keeping the shire-courts in order would, if established, have exercised one of the king's functions for him independently of his personal will, and would therefore have been inconsistent with the accepted principle of personal rule. As it would have obviously taken out of the king's hands some of the power which in accordance with the then current theory ought to rest in them, Edgar and his successors would in all probability have been dead against having it at all. There was no way, indeed, in which the suggested tribunal could lawfully have come into existence unless the king himself took the requisite action; and, as kings are as loath as other men to do what they dislike, it would only have been extreme pressure that could have procured the taking of the action. The idea of such a tribunal, however, lay as yet so far below the mental horizon that the king was safe from having any such pressure put upon him. A legal tribunal of the sort referred to was therefore out of the question as a remedy for the lack of co-ordination between the kingship and shire-courts. No remedy had the least chance of being approved unless it purported to be consistent with the personal rule of the king. That being so, the remedy to which Edgar had recourse in regard to juridical matters was the application of moral suasion. In regard to administrative matters, he tried a remedy which was of much the same type, consisting in bringing to bear upon each shire-court the personal influence of some territorial magnate highly thought-of in the surrounding districts, who was to act as the king's vice-gerent. To that end, the shires were arranged into groups of a convenient shape and size, and each group was committed to the governance of an *earl*, who was to be answerable to the king in person if the latter's concerns miscarried anywhere within the group. The *earl* held the post of general officer commanding the *fyrds* of the several shires governed by him. He took to his own use a fixed proportion of some of the main revenues thence accruing to the king, and he was otherwise raised to a pre-eminence tending to make men look up to him. It was no doubt hoped that the dignified station of the *earl* and the power wielded by him would so impress all the shire-courts within the radius of his official influence that they would be content to defer to his authority and to yield to his remonstrances when called for: and it may be that this hope was not belied, at least for a time. But Edgar's remedy, whatever transitory effect it may at first have had, failed in the long run, the failure being mainly due to the operation of two causes whose operation could hardly have been foreseen and certainly could not have been prevented. One cause was the growing strength of feudal ideas and feudal tendencies. The spirit of feudalism was abroad and was working steadily towards turning such an office as that of the Anglo-Saxon *earls* into an hereditary one. As a concession to growing sentiment upon the point, successive kings of England were prone to allow the son and heir of a deceased *earl* to step into his father's shoes almost as of right; and when this course of action had been repeatedly taken, a line of *earls* which happened to be ambitious was granted plenty of time and opportunity to consolidate its hold upon the shires committed to its governance, and to raise itself to a position of predominant influence therein. An *earl* who was established in such a position could not but be a powerful subject, and as the event proved, tended to become too powerful a subject for a weak king to control. The second cause of the failure of Edgar's remedy was the accruing of something incidental to the system of personal rule. In the ordinary course of nature, a regal dynasty is sure sooner or later to throw up a scion deficient in force of character. That occurred, for instance, in the case of the Plantagenets, just as it did in the case of the royal House of Wessex. When it accordingly happens that the throne is filled by an incapable king, if the system of personal rule be in vogue, the whole machinery of government is liable to be thrown out of gear and general confusion tends to ensue. If matters go wrong in that way because the king is weak, the measure of power, which can be left safely in the hands of a subject so long as the king for the time being can rise to the level of his duties, may well prove excessive and tempt the holder thereof to shake off all control. The conjuncture of the king's rule being at once both personal and feeble occurred twice in the last century of Anglo-Saxon history, and each time one or more of the *earls* improved the occasion in his or their own way. In the reign of Ethelred II, when Canute, the king of Denmark, had gained a footing in England and was pursuing his advantages, Ædric Streona, the earl of Wessex, followed a tortuous in-and-out policy on his own account and thereby did much to make the English resistance crumble. Again, in the reign of Edward the Confessor not only did the *earls* overshadow the king and between them practically take the control of secular matters out of his hands, but also their rivalries and jealousies brought the territories governed by them into enmity with each other. The next king, Harold II, was perhaps the man who could have nursed the nation back into a better state of health if only he had been given time, but that is precisely what was not given him. In the events which happened, Edgar's remedy operated so as to convert lack of co-ordination between the kingship and the shire-courts into lack of co-ordination between the kingship and the *earls*, and thereby so far as regards administrative matters made the last state of the nation worse than the first. Both in juridical and administrative matters, then, Edgar's efforts to supply the missing link between the kingship and the shire-courts were defeated by the course of events. Later experience justifies the conclusion that a workable solution of the problem might have been found if it had been possible to eliminate either of the two coexisting factors—the personal rule of the king with its inevitable variations in efficiency, and the juridical independence of the shire-courts with its inevitable repercussions upon their general attitude towards the kingship. The former factor existed because the process of constitutional evolution under the Anglo-Saxon form of polity had taken the direction that it did. The latter factor was a corollary of the form of polity itself. Each factor was therefore conditioned by the existing form of polity, and whilst the latter remained as it was neither factor could be prevented from operating. Hence Edgar's attempts to solve the problem were foredoomed to failure; but there is nothing to show that his attempted solution was not as good as any that could at that time have been conceived. None of his successors, not even Canute, improved upon the method of his solution; and it may therefore be safely presumed that the imperfect application of the unitary principle of social organization left open no remedy for the lack of co-ordination between the kingship and the shire-courts which it had itself produced. The two results which have now been established—the subnormal development of national self-consciousness amongst the Anglo-Saxons and the defective co-ordination between the kingship and the shire-courts—are so important in themselves as to obviate the necessity of continuing the inquiry and exploring what the rest of the results were like. These two results denied the nation the means of evolving in the manner that a well-constructed social organism ought; that is to say, the whole of it together and with the least possible amount of internal friction. The Anglo-Saxon nation as then constituted, having little or no effective freedom to evolve, was practically disabled from adjusting itself to surrounding circumstances; and this disability determined its fate. Its undoing began with the successive invasions of England by Sweyn and Canute, kings of Denmark, which led up to the displacement of the native line of kings and an interlude of alien rule. Then events took such a course that the Wessex dynasty was restored to the throne and the Anglo-Saxon nation was granted a respite which was to last for twenty-four years. It might be thought that with the memories of recent disasters fresh in everybody's mind there would then have been a national revival on a grand scale, and that strenuous efforts would have been made to purge the constitutional system of those elements which had once turned the national strength to weakness and might easily do so again. But in reality the Anglo-Saxons had learnt nothing and forgotten nothing, their insensibility to the lessons of experience being reflected in the fact that the whole reign of Edward the Confessor was not marked by a single exercise of his legislative power. It cannot be said that the constitutional system was so rigid as necessarily to close every way of escape from the precariousness of the nation's situation. As previously stated, the king's potential sphere of action had from Edgar's day begun to grow at the expense of the organized shires. The practice initiated by him of granting away into private hands the jurisdiction of the hundred-courts over particular tracts of land had involved a revolution, as and when applied to parts of England (as, for example, Kent or Sussex) which had retained a good deal of their ancient organization as independent kingdoms; and after that new departure there ceased to be any firm line between what the king with the counsel and consent of the *witan*, however formal, could and could not do. There was machinery, then, which if set in motion, possibly with some straining, might have introduced into the constitutional system those changes which were urgently needed to make the nation fitter to survive. What was not available was the motive power, that being something which the Anglo-Saxons were not able to supply. As soon as Edward the Confessor had mounted the throne, things accordingly proceeded to drift from bad to worse until not one of all the main constituted authorities within the realm could be found to justify its existence. The king allowed himself to be dominated, now by this, now by that *earl*, and he recked so little of his duty towards the nation that though married he wilfully abstained from trying to beget an heir to succeed him on the throne. The *witan* was but a phantom of what it had once been in Wessex, and its influence for good was negligible. The shire-courts were being dragged along in the train of the *earls*, and the *earls*, who with the shires behind them were the real masters of the kingdom, only thought of enriching, and otherwise aggrandizing, themselves and their followers. Such a condition of affairs was the beginning of the end, and that arrived in due course when, sword in hand, William the Conqueror forced his way on to the stage and soon afterwards set about reorganizing the government of England. The Anglo-Saxon form of polity, in fine, fell twice, and twice buried the nation beneath its ruins. The logic of events thereby proved conclusively that the imperfect application of the unitary principle of social organization had so handicapped the Anglo-Saxons as to leave them unable to hold their own in the struggle for existence. Hence it appears that not much distinction can usefully be drawn between the intermittent and the imperfect application of the unitary principle. The former was fatal as already shown in the case of the Celts. The latter was, as now shown, equally fatal in the case of the Anglo-Saxons.

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[1] Stubbs, *The Constitutional History of England*, 4th edition, p. 214.

When William the Conqueror with his expeditionary force attacked England, he gave out that he was merely seeking to assert his personal right to succeed Edward the

Confessor on the throne, such right being claimed by him because, so it was alleged, that king had duly nominated him as heir to the crown. This claim, however extravagant it may have seemed in the first instance, had to be taken seriously when once the Battle of Hastings had been fought. Hence, the *witan* made a virtue of necessity and without further ado acknowledged him as King. His coronation followed on Christmas Day, 1066. This solemn ratification of his pretensions to be regarded as the rightful successor of the Anglo-Saxon kings no doubt stood him in good stead, especially during the period of transition from the old order of things to the new. Nevertheless, he was their successor only in name. After all resistance had been quelled in England there was nothing to prevent his taking unto himself every power seemingly needed for the reconstruction of the kingdom upon the lines that he proposed. He thus found himself in a position to give full scope to his own sound judgement, and there could be little or no restriction upon his choice of means to the end that he had in view. There is no occasion to examine in detail the changes wrought by him in the structure of the social fabric, because the only point of importance about them—at least for present purposes—was the combined effect of them all. In sum and substance, what he did was to make the King of England the sole centre of sovereign will-power within the framework of the nation, and besides to arrange matters generally so as to concentrate in the King's hands as much strength as was possible, and thereby give him the best chance of having his will obeyed. The true inwardness of the transformation effected by William the Conqueror was that he reconstituted the English people upon the unitary principle of social organization, that principle being applied methodically and in all its rigour. That distinctive result of the Norman Conquest makes it the great turning-point in the life-history of the English nation; and because of that result the Anglo-Norman Monarchy entered upon its career fully equipped with every sort of power that circumstances might prove to be necessary in the future. Thenceforward there was to be in England a supreme organ of decision and action inherently competent to serve the nation's purposes in all cases whatsoever. That indispensable condition having been fulfilled to start with, the nation became potentially free to evolve along the lines which were to lead it towards complete self-realization and doing the best that it could for itself. In one direction the evolutionary process brought about progressive modifications of the constitutional system until institutional instead of personal rule had been installed over the whole field of government, as the latter term is commonly understood. Many things worked together to further the development of this fixed feature in the constitutional system. In the first place the very plenitude of the Monarchy's powers tended to give a national incidence to discontent and disaffection when provoked by moral obliquity or lack of sound judgement in high places. The more ways of misgoverning open to the King, the less the chance that any subject had of not finding his own turn come to suffer oppression. If the King ill-treated one lot of his subjects in one respect to-day and met with no resistance there was no knowing in what other respect he might not ill-treat the same or some different lot of his subjects to-morrow. Under such circumstances it could not but be self-evident that it was a matter of common concern to the whole nation that no abuse by the King of any one of his plenary powers should ever be allowed to pass without being stoutly resented. In the next place the unitary form of polity tended, as already shown, to diffuse amongst all classes within the realm the habit of thinking, feeling, and acting in the capacity of a member of the nation where matters of government were concerned; and the prevalence of this habit helped the King's subjects to make common cause together and to react in a body more or less solid when they found his hand pressing too heavily upon them. The coexistence of such a general sense of common interest and of such a general aptitude for collective action rendered possible that long sequence of nation-wide upheavals against misgovernment in any shape or form with which the whole course of English history is studded. Some of these upheavals were successful, some abortive; and the forms which they assumed and the methods which they employed necessarily varied with the manners and customs of the periods at which they respectively occurred. No upheaval of the kind, it is true, was required to start the process of constitutional evolution on its way. Of their own motions Henry I founded the Court of Exchequer (which at first was more an administrative than a judicial tribunal), and Henry II founded the Courts of King's Bench and Common Pleas. By doing so each rendered inestimable services to the nation. But the taste of better government thus obtained in one department of public affairs only whetted the nation's appetite for more; and, to speak broadly, the propelling force which was behind the process of constitutional evolution after the first steps had been taken as above was the mettle of the nation, which was generally ready to risk the consequences of offering a stubborn opposition to the King as soon as the quality of his government fell below the standard demanded by the public conscience of the times. The risings against John, Henry III, Charles I, and James II, show how far the nation, if stirred to its depths, was prepared to go in this connexion. Moreover, the illimitable nature of the Monarchy's legal powers made it well worth the nation's while to resort to all available means of putting pressure upon the reigning King. There was no possible modification of the constitutional system, which, if otherwise legitimate, could not be made with the Monarchy's consent. If a given piece of mechanism for the management of this or that branch of public affairs worked ill, it was open to successive Kings to try one thing after another until some contrivance had been hit upon which would answer the purpose better. Hence, there were always adequate facilities for finding out empirically the true remedy for every such defect in the constitutional system as experience might have brought to light, and the British Constitution represents in truth the cumulative effects of the continuous application for many centuries of the method of trial and error. The process of constitutional evolution was thus kept going because of the coexistence of a number of factors as above, all of which owed their origin to the strictly unitary form of polity established in England after the Norman Conquest. But along with them worked a factor which was not of similar origin, but which yet had a share (probably large) in determining the course which the process of evolution actually took. That factor was the survival or revival of certain Anglo-Saxon ideas. In Anglo-Saxon times folk-right, as already explained, did not emanate or derive its binding authority from the kingship, and the Anglo-Saxon kings were as a rule chary of overriding it by legislative action. The early Norman Kings did not understand, or perhaps for reasons of policy were not willing to admit, that there could be such a thing as a law not made so by a king. Hence, when William the Conqueror confirmed the Anglo-Saxon laws, he did so in terms which fathered them bodily upon Edward the Confessor, who, as already stated, had been no legislator. 'This also I order and will' decreed William I, 'that all shall have and hold the law of King Edward as to lands and all things with these additions which I have established for the good of the people of the English.' This confirmation of Anglo-Saxon laws was repeated in practically the same terms by the Conqueror's son Henry I. 'I give you back again the law' (this word is in the Anglo-Danish vernacular, although the context is in Latin) 'of King Edward with those improvements wherewith my father improved it by the counsel of his barons.' These official pronouncements leave no room for doubt as to what was the Norman theory about the genesis of everything having the force of law. By the time of the Plantagenets, however, this theory had gone out of favour. Anglo-Saxon influences were then beginning to reassert themselves in a diversity of ways. English was becoming, if not the official, at least the literary language. The Anglo-Saxon customary laws with their many variances were being reduced to some degree of orderliness by the decisions of the Royal Courts of Justice and were entering upon a new period of usefulness as the main element in the common law of England. Contemporaneously, the idea that the King is below the law of the land and owes obedience to it is found raised to the dignity of an indisputable first principle of jurisprudence and governmental practice. This idea is virtually identical with the Anglo-Saxon conception of the unchangeable relation between the folk-right and the kingship. It can even be said with truth to have been that very conception itself expressed in the phraseology required to bring it up to date. The traditional view of the relationship had at the Norman Conquest probably been in some danger of being overborne by the Norman theory, inasmuch as the latter's implications pointed the other way. But the threatened breach in the continuity of the tradition was removed to a distance when the early Norman Kings, without any reservations as to the future, confirmed the Anglo-Saxon laws. The previously accredited view thereupon obtained a new lease of life, because thenceforward it could be suggested with some show of reason that when the Anglo-Saxon laws were confirmed they were confirmed with all their incidents and attributes—one of which was their binding force as against the King. At any rate, the best legal opinion so far as its tenor is known at the period of the Plantagenets was perfectly satisfied that the above idea was well founded; and, apart from that, the influences of heredity and of ancestral memory, if so it may be called, apparently had caused the idea to sink so deeply into the mind of the nation that it has stayed embedded there ever since. The idea has at subsequent times of crisis in the constitutional history of the nation repeatedly made its action powerfully felt, and more than once it has proved itself even capable, if thoroughly detonated, of explosions of such force as to cause the Monarchy to rock. Thus, for example, it deposed Richard II and chased James II out of the kingdom. This idea, then, which is clearly of Anglo-Saxon origin, must have had a considerable share in determining the course which the process of constitutional evolution in England after the Norman

Conquest actually took. Another Anglo-Saxon idea, which also probably helped to determine that course, had found expression in a law of Edgar's whereby he enacted that every man, whether poor or rich, should be worthy of folk-right, and that even-handed justice should be meted out to poor and rich alike. The before-mentioned confirmations in bulk of the Anglo-Saxon laws made these rules for the due administration of justice as promulgated by Edgar part and parcel of the English common law, and as such they have remained in force down to the present day. For a long time after having been confirmed, these rules were applicable only to a limited extent in the case of one who, being a villein by status, sought to take legal proceedings against his lord—at least in a Royal Court of Justice. But the system of personal villeinage (which in its essence, though not in all its incidents, was a legacy from Anglo-Saxon times) died out about three centuries after the Norman Conquest, and on its extinction there was no good and lawful subject within the realm who was not entitled to the full benefit of these rules. The effect of one of them, which need not be further considered here, was to establish the equality of all men before the law. The effect of the other was to confer upon every man who became involved in litigation a personal right to have the cause whereto he was party decided in strict accordance with the law as it actually stood. No man could know from day to day when he might find himself in need of the protection to be given by this right, and the effectiveness of the protection, if needed, would obviously depend upon the mode in which the court that should hear the cause was wont to discharge its functions. Hence, it became self-evident to every thinking person that the due administration of justice throughout the realm was a matter of interest to him personally as well as to the whole nation. There was one factor connected with the constitution of the Royal Courts of Justice which long tended to introduce a disturbing influence into their proceedings and to prevent their uniformly acting up to the level of their duties. As those Courts were originally constituted, the judges who sat in them only held their offices during the pleasure of the King and were liable to be dismissed by him at a moment's notice. It was thus possible for the King to keep a threat of dismissal hanging over their heads and make them extremely loath to decide any case in a manner which was not to his liking. It would even have been possible for a King to utilize this power of dismissal in such a way as to furnish himself with the means of riding rough-shod over all the laws of the kingdom. He had but to persist long enough in the policy of removing judges who put their duties before their worldly interests, and of replacing them with more pliable successors, to get in course of time Courts of Justice so constituted as to have neither wills of their own nor scruples about doing his bidding in any given case, no matter what that bidding might be. As a matter of fact, some of the Stuart Kings did abuse so flagrantly the power of summarily dismissing judges as to justify the suspicion that they had ulterior objects in view which boded no good to the ancient liberties of the kingdom. Moved by a sense of danger, men easily reached the conclusion that so long as the office of judge was tenable only during the pleasure of the King no subject could be sure that in all cases justice would be administered to him in the manner that his personal right required. Thereupon the personal interest of every one was seen to be involved in getting the pre-existing system changed; and, that being so, there was in readiness an abundance of motive power to effect the change if ever the opportunity should offer. The opportunity for which the nation was waiting came in the reign of William III, when the Act of Settlement was passed. In that Act it was amongst other things provided that after the accession of the House of Hanover the judges were to hold their offices during good behaviour, but were to be removable upon an address by both Houses of Parliament. That provision when operative marked the final stage in the process of constitutional evolution so far as the judicial power of the Monarchy was concerned. The independence of the judges having been secured, the personal will of the King ceased to operate in any judicial matters, so that it would be a breach of duty on the part of any judge if, in administering justice, he attached the least importance to any hints from the highest quarters. This consummation of the transition from personal to institutional rule in the case of the King's judicial power was all the more important because it established a precedent, the principle of which could be applied with necessary modifications in the cases of the King's legislative and executive powers. The very fact that such a precedent had been set tended, indeed, to reduce the difficulties of applying it in those other cases to the fullest extent that was consistent with reason. The Monarchy had resigned itself to leaving all judicial matters to the Courts of Justice: and after that decisive step had been taken one thing led to another until finally the Monarchy had also to resign itself—possibly within limits—to leaving all legislative matters to both Houses of Parliament and all executive matters to the Ministry. Thus the substitution of institutional for personal rule in respect of the Monarchy's judicial power probably opened and cleared the way for analogous substitutions in respect of its legislative and executive powers. But whether the latter substitutions have been, and in the abiding interests of the nation ought to be, as complete as the former, are questions that stand over for the future to resolve. After the Norman Conquest the Anglo-Saxon idea now under consideration helped in the manner that has been shown to determine the course actually taken by the process of constitutional evolution in regard to the Monarchy's judicial power. By doing so it probably helped to determine the course actually taken by the whole process of constitutional evolution. A third Anglo-Saxon idea which possibly helped to determine that course was the one which found expression in the Wessex constitutional system in reference to the kingship. Under this idea the personal will of the king had to be subordinated to the collective intelligence of the community. The only method of implementing it then available in Wessex was so crude that it broke down under the strain imposed upon it when the kings of Wessex had become kings of all England. The British Constitution, as it now stands, implements by means of a much improved method what seems to be a new expression of the same idea; and the effect of the coincidence is heightened by the fact that the Parliament which is now the chief instrument for implementing the idea was, at least in its initial form, a product of the Plantagenet period during which, as already stated, Anglo-Saxon influences were beginning to reassert themselves. Together, these considerations lend a good deal of colour to the view that the constitutional system of Wessex contained the germ of the present British Constitution; and under the circumstances it is possibly true that the creative idea just mentioned did not perish with the earlier constitutional system, but lay inert at the back of men's minds from generation to generation until, in the fullness of time, it became active once more and helped to determine the course of the evolutionary process which moulded the later constitutional system into its present shape.

Questions as to the possible causes which made the evolution of the constitutional system move in the direction that it actually took are, however, of minor importance. What really matters is the cumulative effect which the changes made by the evolutionary process have had upon the working of the constitutional system. Apart from a subsidiary change to be mentioned below, the substantial effect of those changes was that the judicial, legislative, and executive powers of the Monarchy were, so to speak, placed in commission, they being committed (and, subject to some readjustment of the boundaries between them, respectively committed) to the superior Courts of Justice, to the Parliament, and to the Ministry —all three of them pieces of institutional machinery which are entitled to find their springs of action within themselves and not to be controlled by the Monarchy. In this way, then, the whole system of governmental activities was freed from any direct dependence upon the personal idiosyncrasies of the reigning King, and the national interests were, in the main, placed beyond the reach of dynastic accidents. But it is to be noted that not until a comparatively recent date did the Monarchy fully recognize the necessity of leaving to the above pieces of institutional machinery the whole management of the departments of public affairs with which they were concerned. For a long period previously, the relation between the Monarchy and each of the pieces of institutional machinery had not wholly ceased to be what it was in the beginning; and to this day the official phraseology in reference to them, their proceedings, and their component members, savours strongly of the period when the original relations were still in full force and effect. Thus, for example, the judges of the superior Courts of Justice are still styled His Majesty's Judges. The members of the Ministry are still styled His Majesty's Ministers. As a rule, the supreme direction of all public affairs is conducted under cover of formalities which suggest that the King is actively a party to everything that is being done. And what is true of official phraseology is also true of popular speech and inferentially of popular thought. Large numbers of people are wont to express themselves as if they were under the impression that the entire system of governmental activities emanated from the Monarchy, not constructively, but in some positive and straight-out fashion. There are even some who are unconscious of any straining of terms when they designate Parliamentary statutes as being the King's laws. In view of all the circumstances, then, perhaps the gist of the existing situation may be summed up most accurately by saying that institutional has superseded personal rule as regards matters of substance but not as regards matters of form. Anyway, there can be no doubt that what used actually to be the King's government of the realm is in legal intendment the King's government still. Furthermore, it is to be noted that notwithstanding the definitive change-over to institutional rule in regard to all the operations of government in the usual sense of the word, there still remains a residue of functions to be discharged by the Monarchy represented by the King in his own proper person. These residuary functions are many and diversified, and in the case of some of them the rôle of the Monarchy is to a certain extent rather passive than active. But if institutional rule is to produce the very best results, it is essential (as a few illustrations will show) that the Monarchy should do its part by discharging these residuary functions in an adequate manner. One function, for example, is to stabilize the existing constitutional system; and the King can contribute towards the due discharge of this function by giving his moral support unreservedly to the current system of governmental activities so as to throw the prestige of the Monarchy around it all. Another function is to prevent the antagonism between the ins and the outs incidental to the practical working of the system of Responsible Government from becoming so extreme as to wreck the moral unity of the nation; and one way amongst others in which the King can contribute towards the due discharge of this function is by keeping himself on a summit so high above the level of party politics as to be a perpetual reminder to all immersed therein of how inconsiderable is the volume of matters about which their respective political parties dispute as compared with the volume of matters about which all parties are agreed. A third function is to make the nation hold fast to its traditions: and one way amongst others in which the King can contribute towards the due discharge of this function is by exhibiting himself on State occasions in the midst of such accessories of pomp and pageantry as are conformable to time-honoured precedents. By doing so, he refreshes the nation's historic sense and serves as an object-lesson in the importance of continuity in the nation's way of living. The above examples go to show that the Monarchy, in virtue of its various residuary functions, can supply the nation with means of obtaining self-expression in a number of particulars outside the purview of the ordinary operations of government. The efficient exercise of these functions, indeed, is not so much government as a prelude to and preparation for really good government. When they are duly discharged the public mind tends to continue so poised and balanced as to allow institutional rule to do its perfect work; but when they are not duly discharged the nation cannot remain settled in the right frame of mind for being governed to the best advantage. That view of the value of the residuary functions of the Monarchy is borne out by what is now coming to the surface in France. The republican constitution in force in that country does not enable the nation to realize itself fully in such respects, for instance, as maintaining contact with its own past, and preventing the struggles between political parties from proceeding to unreasonable lengths. Hence the rising generation is being worked upon by a sense that there is something lacking in the nation's present way of living, and the students of Paris are said to be set upon the restoration of the French Monarchy as the most promising method of getting the national life made into a more shapely and comely whole. Matters standing as they do in Great Britain, the residuary functions of the Monarchy involve the exertion, not of power, but only of influence. The King, when exercising these functions, cannot compel his subjects to do anything. All that he can do is to bring to bear upon them the moral authority of the Monarchy, great as it is. On the other hand those functions of the Monarchy, which appertain to or are concerned with government in the usual sense of the word, normally involve the exertion of power—backed up by the right to resort to methods of compulsion in order to make itself prevail. Evidently an exquisitely delicate sense of the fitness of things must have animated the process of constitional evolution when it discriminated in the manner that it did between the various functions, actual or potential, wherewith the Monarchy was originally invested. Institutional rule forced itself into regular operation in the case of those functions which involve or may involve the exertion of power, but not in the case of those functions which merely involve the exertion of influence, these latter functions tallying with the residuary functions of the Monarchy as they have previously been called.

The placing of the judicial, legislative, and executive powers of the Monarchy in commission, so far as matters of substance are concerned, was the main achievement of the process of constitutional evolution. But the change-over from personal to institutional rule was not consummated, at least in the case of the executive power of the Monarchy, until a subsidiary change had been accomplished in regard to one executive function which stood on a footing by itself. The function of appointing and dismissing Ministers came within the ambit of the executive power of the Monarchy, but unlike other executive functions it could not reasonably be committed to the Ministers themselves. Hence the personal will of the King could not be eliminated as the decisive factor in the exercise of the Monarchy's executive power generally until the executive function particularly referred to had passed into the keeping of some constituted authority other than, and independent of, the Ministry. In due course the process of constitutional evolution found a way of satisfying this requirement. As Parliament gradually grew stronger and stronger, the logic of events made it clear that the conduct of public affairs could not possibly go on smoothly if the Ministry and the Parliament were out of sympathy with one another. If the Parliament had no confidence in the Ministry experience proved over and over again that one thing was sure to lead to another until a crisis was imminent which threatened to throw the machinery of government out of gear. If in such a case the King were to have had recourse to a dissolution of Parliament as a means of averting the impending deadlock there would have been no certainty that the House of Commons would not come back from the country more disinclined to provide for the financial needs of the Ministry than before; and for that, amongst other reasons, convenience amounting to practical necessity usually drove the King to resort to the other remedy—that of dismissing the Ministry—as being of less doubtful efficacy. Every occasion of resort to the latter remedy formed a precedent for its being adopted in like cases in the future;

and the cumulative effect of a stream of precedents all pointing the same way eventually produced a general impression that the King was bound to adopt the latter remedy whenever the relations between the Ministry and the Parliament had become unduly strained. In the end, the right of Parliament to insist upon the dismissal of a Ministry in which it had no confidence came to be recognized as indisputable; and when once that right had been well established, it became futile for the King to appoint Ministers of whom Parliament presumably would not approve because that body was in a position to demand their removal from office as soon as they had been appointed. The result was that the King was left with practically no option except to exercise the function of appointing and dismissing Ministers in strict accordance with the Parliament's wishes. When once the exercising of that particular function had fallen under the Parliament's control, the requirement referred to above was duly satisfied; and thereupon the process of constitutional evolution went on to commit the rest of the executive functions of the Monarchy to the Ministry. The Ministry thus became charged with the special duty of taking the initiative in connexion with the exercising of the last-mentioned executive functions, and whatsoever it did, if not otherwise illegal, in pursuance of that duty was valid. But though in theory the Ministry had a perfect right to act upon its own independent judgement as to what was the proper mode of dealing with any given case, yet its relations with the Parliament were such as to prevent its being wholly a free agent in the matter. In effect, it only held office during the pleasure of Parliament, and it was therefore liable to be dismissed at a moment's notice if it were found to have dealt with any case in a mode which Parliament subsequently thought worthy of censure. The power of dismissal thus furnished the Parliament with leverage by means of which it was able to make itself the tribunal for deciding in all cases whether the Ministry had done just what the circumstances required; and the Ministry was in consequence reduced to a condition of responsibility to and dependence upon the Parliament. Hence all things worked together to establish the supremacy of Parliament, not only in legislative but also in administrative matters. Besides being the authorized depositary of the Monarchy's legislative power, it also secured for itself the ultimate control over the exercise by King or Ministry (as the case might be) of the Monarchy's executive power. The concentration of both these powers in the Parliament's hands was a factor in the situation to which the process of constitutional evolution perforce adjusted itself by accepting it as a new and secondary basis of departure. Making a fresh start from that basis the process went on to methodize the use of both the above powers in correlation with one another, and the result was the working out of the system of Responsible Government—treated of in a previous chapter. Hence, if a comprehensive view be taken of the march of events from the Norman Conquest down to comparatively recent times, the truth appears to be that the Monarchy, as inaugurated at the Norman Conquest, served as the foundation upon which the process of constitutional evolution erected a régime of institutional rule, and that that régime was afterwards improved as to parts of it by the addition thereto of the system of Responsible Government. These architectural features had all been combined together into the structure by about a century ago, and thereupon the British Constitution assumed its present shape.

The strictly unitary form of polity which in one direction ministered to the growth of the British Constitution also took effect in another direction by creating amongst those living under it an appetite for objective as opposed to subjective politics. The public opinion of the British nation taken in mass is essentially practical-minded. What it requires of all governmental activities is that they should be justified by their results relatively to the attainment of the national well-being and safety. It is to the prevalence of this mental attitude that the British nation owes its political common sense. A public opinion with this faculty of fastening on the main point is well able to meet the demands that the system of Responsible Government makes upon it. Being in touch on the one side with the nation's instinct of self-preservation, it becomes primed with a sense of the nation's real needs and forms ideas as to how those needs can best be satisfied. Being in touch on the other side with the nation's supreme organ of decision and action, it keeps the latter under a pressure which constrains it to give its undivided attention to satisfying the nation's real needs by the most suitable governmental actions. As things are in Great Britain, therefore, public opinion operates, so to speak, as a sensitive nerve-centre so interposed between the nation's instinct of self-preservation and its supreme organ of decision and action as to compel the latter to work faithfully for the former. The relations between the two are in fact placed upon a footing analogous to those subsisting within a man who has a good nervous system as well as a good physique. In either case the cohesion between the supreme organ of decision and action and the organism is so complete that the former can only act as organ of and for the latter and cannot intend to act otherwise. The analogy in the respect just mentioned is, it hardly needs be added, complementary to that which arises from the fact that the British Constitution rests at base upon the unitary principle of social organization. Where a nation is constituted upon that principle, its supreme organ of decision and action, as explained in a previous chapter, exercises over the nation and its activities a measure of control analogous to that exercised by the human brain over the man and his activities. To constitute a nation so that the analogy with Nature goes as far as that but no farther is a feat which does not require more than a moderate amount of constructive ability—an amount which has been exhibited times without number in the history of the world. The peculiar excellence of the British Constitution is that it carries the analogy with Nature a step further. The supreme organ of decision and action is so geared up with the nation's instinct of self-preservation that the former must conform to the promptings of the latter. There is thus reciprocal control between the nation and its supreme organ of decision and action; and it is for that reason that the British nation has the advantage of being constituted as nearly as may be in accordance with Nature's plan.

Looking backward, then, no one need have any difficulty in seeing why the three experiments referred to at the opening of this chapter ended as they respectively did. The social organism created by William the Conqueror upon the unitary principle was not only stable in itself but it also had freedom to evolve; and the process of constitutional evolution in the events which happened proved equal to making the social organism grow more and more perfect in its structure. The social organisms created by the Celts and the Anglo-Saxons were malformed from the start because the unitary principle in its integrity was never duly applied to them; and, in the upshot, the experiments tried by those ill-fated peoples recoiled upon their own heads. The consequent ruin which overtook each of them was no more accidental than is the abundant vitality which the British nation now enjoys or the position which it has won for itself in the world. The results of the first two of the experiments as taken in their chronological order were, it is to be noted, purely negative. What was thereby shown was that the intermittent or imperfect application of the unitary principle of social organization did not introduce into a nation all that was necessary to fit it out thoroughly against the incalculable exigencies of the struggle for existence. But the results of the third experiment were positive and amounted to a demonstration that the right way to set about constituting a nation so as to give it the best chance of surviving is to apply the unitary principle of social organization rigorously, and that where that has been done to a nation at the start it will feel the benefits all through its career. The results of this third experiment have lost none of their probative force with the lapse of time and point now to the conclusion that the Australian nation as constituted upon the federal, that being the very opposite of the unitary, principle of social organization is constituted upon a principle which flies in the face of Nature. Hence the constitutional history of what is now England furnishes a decisive argument in favour of the exercise by the Australian nation of the option reserved to it in such a way as to afford succeeding generations the shelter of a strictly unitary form of polity and thus to ensure, so far as is humanly possible, their safety in the land. Otherwise there is too much reason to fear that outraged Nature will avenge itself at the expense of some unhappy generation amongst them and consign it to a fate like that which overwhelmed in turn the Celts and the Anglo-Saxons.

CHAPTER VI

THE FLIMSINESS OF THE STOCK PLEAS IN DEFENCE OF FEDERALISM IN AUSTRALIA

THE main reasons for a reconstruction of the Australian nation upon the unitary principle of social organization having now been given, it may be advisable before bringing the inquiry to a close to go through the various contentions that are usually put forward on the other side and to show that there is nothing in them. One of the commonest of those contentions is that Australia is too big a country for any constitutional system other than a federal one. Some colour is perhaps lent to this contention by the forms of expression generally used in reference to the modes of government prevailing in particular countries. It is often said, for example, of France or Spain that it has such-and-such a form of constitution or that it is constituted for the purposes of government in this or that way. But in reality such expressions are merely figures of speech. The people living in a country, not the country itself, is constituted for the purposes of government. The best constitutional system for Australia means the best one for the Australian nation, and any attempt to get clear ideas as to what that constitutional system is must take the nation as the starting-point and thence go on to determine what form of polity will offer the nation the best facilities for fulfilling the duty it owes to itself and will keep it as fit as possible to survive. To think the matter out upon those lines brings up for decision two questions which logically are severable from one another. The first question is as to the principle of social organization upon which the nation ought to be constituted, having regard to the final end and aim of its being. As appears from the trains of reasoning pursued in previous chapters, that question can only be answered in one way. The right principle upon which to constitute the Australian nation is beyond all controversy the unitary one. That issue having been settled there next arises the question as to how the apparatus of governmental mechanism resting upon that principle ought to be constructed in order that the nation may have the best chance of getting good government. To answer that second question correctly, the conditions subject to which the apparatus of governmental mechanism is to work must obviously be taken into account; and the fact that Australia contains an area of about three million square miles lends materiality to considerations which it would be fatuous in that connexion to ignore. These considerations are extremely pertinent to the issue raised by the second question, but they have no real bearing upon the issue as to the principle of organization as already dealt with. The contention now under examination nevertheless lumps the two issues together and then purports to dispose of the whole matter by attaching exaggerated, nay, supreme, importance to a single factor—the size of Australia—whereas it is only one factor out of the many to be taken into account, and there only where it is logically in point. One factor which is thus passed over as negligible is the inchoate sentiment of nationality which has become manifest in Australia, not because of the present federal form of polity—which, unlike a unitary one, galvanizes particularism into fretful activity—but in spite of it. Since the Australian colonies were federated, portentous changes in Asia and the world-shaking incidents of the Great War have produced in Australia reactions which, when reinforced by other unifying influences, have caused its inhabitants to make some advance towards moral unity. The logic of events has thus proved that Australia is not too big to allow people within it to feel themselves one; and it is not open to doubt that, with the aid of the integrating process which a unitary form of polity would normally set up, the Australian nation could develop within itself all the moral elements of nationhood. Hence it may reasonably be inferred that Australia is not too big to allow its inhabitants to become all that a nation ought in inward spirit to be. But if the contention now under examination is sound, Australia is too big to allow that nation to be so constituted as to govern itself to the best advantage; and those living in Australia may be a nation provided only it be ill-governed. Such a paradoxical result naturally suggests doubts as to the soundness of the contention itself. To demonstrate its unsoundness, indeed, nothing further is required than to refer to certain facts connected with the extent and constitutional arrangements of the British Empire in comparatively recent times. The British Empire, as at the close of the Napoleonic Wars it lay scattered over the globe, was composed of territories whose area in the aggregate was many times greater than that of Australia, the latter continent being only part of the very much larger whole. The apparatus of governmental mechanism which controlled the whole Empire was constructed upon the unitary principle, and at the centre of things consisted of the British Monarchy together with the Imperial Parliament and the Imperial Ministry as respectively exercising for it its legislative and executive powers—the only powers calling for mention in the present connexion. Away from the centre the apparatus of governmental mechanism was reinforced by an extensive system of subordinate pieces of institutional machinery exercising the powers delegated to them mostly at their own discretions, but sometimes in strict and enforced accordance with the instructions that reached them from head-quarters. For the whole Empire, then, there was but a single supreme organ of decision and action which within the limits of the practicable could everywhere make its sovereign will prevail. For causes which may be here disregarded the aggregate area of those parts of the present Empire which are administered under the supervision of those in authority at its centre is much less than previously was the case; but as so reduced their aggregate area will stand comparison with that of Australia. For a century and upwards a unitary constitutional system has existed within the British Empire on a scale never less than grandiose, and, all things considered, it has succeeded throughout the area governed in attaining the ends of government in a manner exemplary enough to have left the censorious little or nothing to carp at. The difficulties of the task thus happily accomplished were increased by the operation of two factors not operative to any extent worth mentioning in Australia as it is. One factor, which continued in action for some time after the close of the Napoleonic Wars, was that the available means of communication and locomotion were rudimentary and defective. Steamships and railways were not in common use. There were no motor-cars or aeroplanes; nor was there any telegraphy or telephony. The other factor was that the populations of the component parts of the Empire were differentiated from one another in an almost infinite variety of ways and included many lacking even substantial homogeneity within themselves. Even in Great Britain itself there were three spoken languages, two bodies of law of independent origins, and two Established Churches which disagreed on many points; and the divergencies which existed in Great Britain were insignificant in comparison with those which existed in some of the other parts of the Empire. These diversities could not go as deep or amount to as much as they did without adding to the average complexity of the legislative and administrative problems that those in the highest places had to wrestle with, and in consequence there was more work thrown on to the Imperial Parliament and the Imperial Ministry. Yet the two bodies together proved themselves equal in spite of every hindrance to the task of carrying on the supreme government both of Great Britain with its dense population (now become more than six times greater than that of Australia) and also of those parts (sometimes bigger than Australia in aggregate area) of the oversea Empire that were under their direct control. An apparatus of governmental mechanism constructed on similar lines, if set at work in Australia, would not have to cope with the adverse influence of either of the factors referred to above, and apart from that there is nothing to warrant the belief that the task of carrying on the supreme government of Australia alone would impose on those at the head of affairs a strain heavier than that borne without ado by the British Parliament and Ministry. Hence it seems quite safe under the circumstances to conclude that the size of Australia does not prevent its being a manageable area for the purposes of a unitary constitutional system, more especially if regard be had to the possibilities—to be discussed a little farther on—of decentralization under that system. For that and other reasons, then, the contention that Australia is too big to be governed by any such means may be dismissed as of no value.

Another contention which is frequently advanced is to the effect that in the interests of decentralization the present federal form of polity must be retained. Decentralization is clearly not an end in itself. It is a potential means to an end, that end being good government.

To find out whether the above contention ought to carry any weight, it becomes necessary to ascertain how far the decentralization effected in conformity with the method adopted by Australia's present federal form of polity is serviceable as a means towards the attainment of good government. That method, as already explained, consists in reserving to the individual States the exclusive right to take legislative and administrative action in respect of all such subject-matters of governmental activity as are not specifically allotted to the whole commonwealth, and in making the Federal and the several State sets of institutional machinery independent of one another, to the intent that each of them may have its own sphere of action to itself. The constitutional system as constructed upon such a plan leads or may lead to various results—some certain, some probable, some possible—which have already been discussed at length. But only the results which either by force of logic or by force of circumstances are certain or practically certain to accrue are material for present purposes; and of these last-mentioned results it will be sufficient to pick out three as having possibly the most profound influence upon the general quality of the government. The first inevitable result is that the nation is left unprovided with the requisite governmental mechanism for the systematic performance of the twin processes referred to at the opening of the Second Chapter—the processes, that is to say, of regulating all legislative and administrative actions by reference to the exigencies of the nation's situation in its entirety, and of co-ordinating all such actions so as to make of them a coherent whole. No governmental mechanism could have the competency requisite for the performance of such processes unless it were armed with powers which would be inconsistent with the independence of the State sets of institutional machinery; and therefore the initial defects in the mode in which the nation is organized for the purposes of government can never be thoroughly made good. That being so, the nation's efforts to attain its own well-being and safety must of necessity be put forth in such a rambling and disconnected way as never to amount to a well-aimed and a well-articulated whole. In the ordinary course of things, then, some of the essentials of good government must always prove lacking. A second inevitable result is that a great change for the worse comes over the system of Responsible Government. In all spheres of action, whether Federal or State, there prevail conditions which obstruct the due enforcement of the principle of responsibility in a short and summary way, and do not lend themselves to the formation of a public opinion with sufficient quickness of perception and robustness of texture to be able to look after itself and not to be caught napping. Under the conditions which exist, the system of Responsible Government is to a considerable extent thrown out of gear and fails to work as an instrument for the attainment of the national well-being and safety, ceasing to be much more than an instrument for regulating the enjoyment of the emoluments of office by those political practitioners upon whom Fortune has smiled. As thus denatured, then, the system of Responsible Government, instead of stopping misgovernment, actually brings it about. A third result—inevitable in the case of such States as have disproportionately large populations massed at the State capitals—is that no principle of policy is in the least likely to be applied in practice which does not square with the metropolitan population's views of its own interests, those views being prejudicially affected by the opaque atmosphere and artificial surroundings in which the political life of the State is led. In most if not all of the several mainland States metropolitan interests count for more than those of all the rest of the State put together; and in the States' spheres of action this tendency to look at pending questions from a strictly urban point of view asserts itself so generally that there is no possibility of its being kept out of the Federal sphere of action, where, also, it makes for preferential treatment to urban at the expense of rural interests. In previous chapters sufficient reference has been made to the incalculable mischief wrought by the predominance of this tendency in nearly all spheres of action. In the northern parts of New South Wales there is a reaction, called the 'New State Movement', which, by the curious irony of events, inscribes 'Decentralization' on its banners; whereas the main cause of the grievances which have provoked this protest is that very decentralization which the present constitutional system renders part and parcel of the established order of things. The inevitable results supervening as above when the federal method of procuring decentralization is put into force under such conditions as prevail in Australia cannot be viewed without causing any open-minded man to ask whether a unitary form of polity will not offer some prospects of the enjoyment of the benefits of decentralization at less exorbitant cost. The method whereby decentralization is effected under a unitary constitutional system differs radically from the federal method of effecting it. Under a unitary constitutional system the normal method is to proceed by way of devolution. The supreme organ of decision and action makes to some other constituted authority a grant of the right to exercise certain powers, either legislative or administrative. Familiar instances of this mode of bringing about decentralization are presented in the Constitutions bestowed by the Imperial Parliament upon the Australian colonies, which thereby became invested with the right of self-government, and in the proceedings in common form regularly taken to confer upon particular localities legal authority to discharge municipal functions. There is practically no limit to the extent to which decentralization can be carried, whether in legislative or in administrative matters, by means of this unitary method, which has to boot the incidental advantage of being more flexible than the federal one. Under a federal form of polity, the subject-matters of governmental activity reserved for decentralization are fixed once and for all by the terms of the Constitution itself, and cannot be increased or reduced in number unless the Constitution be amended, that being no light matter. Under a unitary form of polity there is nothing to prevent tentative measures and repeated experiments, until by the method of trial and error something like finality is reached as to how far decentralization ought to go and what shape it ought to assume. Hence there are facilities—not available under a federal, but available under a unitary form of polity—for ensuring that decentralization shall proceed upon a plan adjusted to the circumstances. If Australia had a unitary constitutional system, then, everything requisite in the way of decentralization could be procured, supposing its supreme Parliament were disposed to take the necessary action. The conditions as then prevailing would be propitious to the proper working of the system of Responsible Government, with a public opinion so formed as to be capable of playing its part and keeping Parliament and Ministry up to the mark. Moreover, there would be several operative factors tending to make public opinion exercise itself about the need of decentralization. One factor would be the size of Australia, which, though not an argument against a unitary constitutional system, would be a cogent argument for as much decentralization under it as would be compatible with the nation's preparedness to react to its changing environment as intelligently and vigorously as it could. Another factor would be the prevalence amongst the bulk of the nation of a rooted sentiment—possibly a vestigial trace of the Anglo-Saxon mentality—in favour of localizing as much of the machinery and as many of the operations of government as might be practicable. A third factor would be the eagerness of each and every State to have to itself some establishment of government mechanism acting in and for the State so as to express its individuality and soothe its corporate self-consciousness. A fourth factor, perhaps, would be rankling memories of the arrangements originally made for the centralized administration of Federal laws dealing with subject-matters of governmental activity allotted to the Commonwealth—arrangements which caused umbrage to be taken at their inconvenient nature and at the growth, as a consequence of them, of a bureaucratic spirit. With so many factors co-operating to make decentralization a burning question, it would be strange if public opinion was not sooner or later wrought up into a fitting mood for seeing the matter through. Thereupon, the Parliament and Ministry would be subjected to a pressure propelling them along the path which promised to lead to the working out of such a system of decentralization as would not be below requirements. All the probabilities of the case are in favour of the conclusion that the establishment in Australia of a unitary form of polity would be followed in due course by the development of decentralized government on whatever scale the nation with its common sense to guide it wanted, and if perchance the government of the country at any given moment was from a scientific point of view either too much or too little centralized, it would be so only because the nation did not wish it otherwise. That forecast of what would be likely to happen in Australia under the auspices of a unitary form of polity is to some extent borne out by what actually happened in England upon the establishment there of a similar form of polity as the result of the Norman Conquest. No attempt was then made to centralize all the operations of government. On the contrary, much decentralization was allowed to prevail in regard to certain phases of the national activities, the counties being left free to manage in their own ways what were then considered to be their own affairs. More than that, the march of events took a course which led to the better organization of the counties as administrative bodies, and to their being equipped with improved institutional machinery, which, without substantial alteration, went on doing its work fairly well for four centuries. As that instance shows, the genius of the unitary constitutional system is not opposed to decentralization in administrative matters: that coming about naturally and almost of its own accord as soon as circumstances call for it. Nor is the genius of that system even opposed to decentralization in legislative matters when there is any practical necessity for it. From very ancient times there have been legislative bodies in active operation in the Channel Islands and the Isle of Man, none of those places being bound by an Imperial Statute unless expressly named therein. In modern times, too, the process of decentralization in legislative matters has gone on apace within the British Empire, and subordinate legislative bodies have been freely created wherever it became evident that there was practical necessity for them. What the genius of the unitary constitutional system is opposed to is having more than one centre of sovereign will-power within the same body politic. Hence, in the event of the adoption of a unitary constitutional system in Australia, its logical consequence would be the subordination of the State Parliaments (if any) to the one supreme Parliament for the whole country. All things considered, then, there is every reason for holding that if the Australian nation, in exercise of the option reserved to it, elected to live under a unitary form of polity, decentralization would be bound to come either with it or in its train. Possibly the decentralization would come by instalments; but in any case it would come in accordance with some scheme or schemes sanctioned by the National Parliament, which would always be at hand to rectify any mistakes. That Parliament, indeed, would show itself singularly deficient in constructive ability if in the long run it wholly failed to devise some scheme of decentralization which avoided producing those results inevitable when decentralization is effected by the typical federal method—the results, that is to say, of maiming the nation so as to disable it from getting certain things regularly done which are indispensable to the proper ordering of its life; of upsetting the working of the system of Responsible Government so as to cause the virtue to go out of it; of placing the metropolitan populations in such a false position as to inveigle each of them into more or less systematic abuse of the power that its voting-strength gives it. There is no need why any of these results should be reproduced by the scheme of decentralization to be finally settled by the National Parliament of Australia. The risk that any of them would in fact be so reproduced is practically on a par with the risk that no sustained efforts would be made to achieve decentralization at all. From the common-sense point of view, indeed, both risks are negligible and no reasonable person will allow his judgement to be swayed by superfluous anxieties on either score. So much having at length been made clear, there is no longer any obstacle to the institution of a comparison between the decentralization now prevailing in Australia and the decentralization which may confidently be expected to make its appearance there under a unitary form of polity as soon as it had acquired momentum—a comparison, that is to say, in respect of their potential efficacy as means towards the attainment of good government. As a result of the comparison, the superior efficacy of the latter kind of decentralization shows up with perfect distinctness. That being so, there can be no escape from the conclusion that the interests of decentralization would be better served if a unitary instead of a federal form of polity were in force in Australia. The true interests of decentralization, then, are all against the retention of the present federal form of polity, and the contention now under examination turns out to be baseless.

A third contention which carries weight in some quarters is to the effect that each State must have a Parliament of its own to serve as its organ of decision and action. It is no doubt true that under the present federal form of polity no State could be sure of the quiet enjoyment of its right to govern itself as it pleased in relation to all matters coming within the State sphere of action unless it had its own Parliament and unless that Parliament was independent. The right of self-government within certain fixed limits and the independence of the State Parliament are two things which obviously stand or fall together. But the logical consequence of the closeness of the connexion is that if the inhabitants of the several States agreed to pool their limited rights of self-government, to the intent that the collective nation might in the last resort have unified control over all governmental activities going on within itself, then and in such a case the sole reason for the independence of the State Parliaments would disappear. Independent State Parliaments are necessary only so long as the nation abstains from exercising the option reserved to it of placing itself and its fortunes in the safe keeping of a unitary constitutional system. But if the nation decided to exercise the option, new considerations would arise. As already said, there would theoretically be room under a unitary constitutional system for State Parliaments to discharge functions delegated to them by the National Parliament of Australia. But if convenience amounting to practical necessity be taken as the criterion would there be any real need for them? That raises an issue hinging upon the correct answers to be given to two questions, which had better be distinguished and dealt with separately from one another. The first question is whether, all things considered, it would be better for the Australian nation if and when reconstructed upon the unitary principle to have or not to have subordinate State Parliaments for legislative purposes. The Imperial Parliament, as is well known, besides meeting all the calls that the oversea Empire makes upon its time and energy, manages to get through the work of legislating for over forty millions of people in Great Britain, and as Imperial Statutes are on occasions re-enacted in Australia with or without minor alterations it may reasonably be inferred that there is no lack of finish in the way the work is done. Australia is not less of an economic unit and is more of a social unit than Great Britain and its population is under seven millions. In view of such facts as the above there cannot be the slightest doubt that a single Parliament for Australia could by itself get through the work of legislating as required for the whole country. Moreover, if that work were left to one Parliament only, a number of incidental advantages would accrue, whereof it will be sufficient to particularize three. One incidental advantage would be that the laws in force in the several States would cease to grow, as they now do, more and more divergent. Six State Parliaments cannot keep on legislating independently of one another as to matters coming within the States' spheres of action without bringing about progressive differentiations between the bodies of statutory law operative in the respective States, and, it may be added, without in some measure reproducing in Australia one of the causes which led to the undoing of the Anglo-Saxon nation. If instead of six independent State Parliaments there were six subordinate State Parliaments legislating within the limits prescribed for them by the National Parliament of Australia, the State statute-books would presumably still show the same tendency to diverge, though possibly not to the same extent. But if there were only one Parliament legislating for all Australia, the statutes enacted by it would in the absence of some special reason to the contrary regularly be made to apply uniformly to all the States, and the movement towards further differentiation would thus be checked. Moreover, it would not be too much to expect that, sooner or later, the Parliament would proceed to undertake a general revision of pre-existing State statutes so that the statutory law in force in one State might be assimilated as far as was practicable to that in force in every other. When that had been done, Australia would at last be allowed to enjoy the substantial boon of legal uniformity. A second incidental advantage would be that an automatic check upon the volume of new legislation would be brought into operation. A single Parliament making laws for all Australia would presumably find its work cut out to get through all the projects of legislation that were plainly desirable in the national interests, and it would have little or no time to waste upon those of a more questionable character. Force of circumstances would thus ensure the making of some rough-and-ready distinction—even though it were only by rule of thumb—between Bills which must be passed without delay and those which might be allowed to stand over to a more convenient season, the latter being sorted out for the 'slaughter of the innocents', as it is usually called. The pressure upon the time of the Parliament would thus cause the brake to be put on precipitate legislation. If, on the other hand, there were a division as between seven Parliaments of the labour of legislating for Australia, none of them would be so pressed for time as to be compelled to confine itself to the discussion of measures that were urgently required. Each of the seven Parliaments would have leisure to dally with legislative projects which were not wanted by the public but were wanted by the political party controlling the law-making machinery in order to advance its own party interests. Under the present federal form of polity, the division of the labour of legislating between the seven Parliaments has paved the way to the infliction upon a public—all the while craving to be let alone—of much legislation passed for mere vote-catching purposes. If a similar division of labour persisted under a unitary form of polity similar results would to some extent be certain to follow. In the United States of America it appears that the annual volume of new legislation under its federal form of polity is startling. Says *The Budget*—a New York periodical which speaks with authority on the subject—in its issue of May 1st, 1923: 'Year in and year out we enact an average of not far from 10,000 new laws annually. Congress is responsible for an annual enactment of about 300 laws not including the so-called private bills to afford relief out of the public treasury to various individuals, and the States for the remainder. . . . The number of State and Federal laws at present on our statute-books is conservatively estimated to surpass 200,000.' Legislation has been going on in the United States for a very much shorter period than in Great Britain. In the case of the latter country Mulhall's *Dictionary of Statistics* declares that in 1873 statute law comprised 18,000 statutes. The contrast between the figures cited speaks for itself and leaves no room for doubt that the protection which would be afforded to the Australian nation by the existence of such an automatic check upon over-legislation as is described above would be an advantage of considerable value. A third incidental advantage would be that the conditions under which the one Parliament did its work whilst legislating for all Australia would tend to limit the action of that awkward factor which consists in the growing political preponderance of the metropolitan population in nearly every State. No single metropolitan population by itself would have at its beck and call a sufficient number of members to be able—at least under normal circumstances—to impose its views and wishes upon the Parliament as a whole. It is conceivable that all the members representing all the metropolitan populations might band themselves together and thereby exercise a decisive influence upon the counsels of the nation. But as already suggested in the Fourth Chapter such a coalition would be likely to go to pieces as soon as it tried to force through any project of legislation seeking to aggrandize the metropolitan populations at the expense of the rest of the nation.

No doubt the above factor would in the ordinary course of things be sure to leave marks of itself upon the legislation that the one Parliament would pass. But the spirit of the surroundings would presumably temper and moderate the influence of that factor and would probably prevent it from carrying its action to lengths inconsistent with the highest interests of the nation. But however that may be, one thing at least seems clear. There cannot possibly be a better way of dealing with the above factor than that of disabling it from operating except subject to those psychological conditions which would of necessity prevail when the whole of the national fortunes were visibly staked upon what the one Parliament did in discharge of its functions. If instead of dealing with the above factor in that way State Parliaments were kept on foot under a unitary constitutional system and permitted to do their allotted share in the work of legislation, they none of them would be under any appreciable pressure to look at matters from the nation's point of view. Each of them would not only feel itself free to keep its eyes within its State but also the sheer force of circumstances would practically constrain it to do so. The conditions would thus be favourable for the metropolitan population to bring its weight of numbers to bear and successfully to insist that its own immediate interests should receive first consideration and should be allowed to determine the trend of the State's legislative action. With the State Parliament legislating in each State as from its metropolitan population's point of view and the National Parliament of Australia legislating as from the nation's point of view an element of confusion must of necessity be introduced into the governmental activities going on within the nation's frame. Under such circumstances there would be little or no chance of avoiding chronic tension and friction.

Upon a view of the whole matter, then, it plainly appears that under a unitary constitutional system it would not be possible to allow State Parliaments any share in the work of enacting statutes without forfeiting sundry advantages, whereof the one last-mentioned is of incalculable value. Hence, the correct answer to the question propounded above is that it would be better for the Australian nation if and when reconstructed upon the unitary principle not to have State Parliaments for legislative purposes. So much being clear, the next question is whether, if and when the nation was so reconstructed, State Parliaments would still be necessary in order to guard against a change for the worse in the spirit in which the executive government of the States is carried on. As matters are now arranged, the executive government of a State is carried on by the Governor as representing the King, but it rests with the Executive Council to say in all cases what action the Governor in his official capacity is to take. The composition of the Executive Council—or Ministry as it is more generally called—is therefore the decisive factor in determining how State affairs will be managed, and in the ultimate analysis the power to appoint and dismiss members of the Executive Council is reserved to and deposited in the State Parliament. The hold which the State Parliament thus gains over the Executive Council is in effect the means whereby the executive government of the State is kept on lines corresponding to and agreeing with the views and wishes of the majority of the people of the State. In the event of the abolition of the State Parliament there could be no certainty that the executive government of the State would be continued in the same spirit as before unless two operations could be performed with success. One operation would be to transfer the power of appointing and dismissing Executive Councillors to some new and suitable depositary. The other operation would be to place the Executive Councillors appointed in the new way amidst such surroundings that their natural bent would be towards carrying on the executive government of the State on the lines which used to be followed under the pre-existing order of things. The first operation would be simple. The central authority of the nation would be a suitable depositary of the power to appoint and dismiss the Executive Councillors of a State, the Parliament of all Australia possibly being the better depositary of the power to dismiss and the Ministry responsible to it the better depositary of the power to appoint. That such an arrangement would not necessarily be productive of a change for the worse in the spirit in which the executive government of the State was carried on is shown by an historical precedent which has already been referred to—that of the English county. The Lord-Lieutenant, the Sheriff, and the Justices of the Peace, who were the chief functionaries of the English county, were one and all appointed by the

King and liable to be removed from office at a moment's notice. The executive government of the county was conducted by Justices of the Peace sitting in Quarter Sessions, which, besides being a judicial, was also an administrative body. For four centuries or so Quarter Sessions was thoroughly successful in giving expression so far as administrative matters were concerned to the corporate self-consciousness of the county, and in governing the latter in the way that it wished to be governed. As an administrative body, Quarter Sessions probably had its failings; otherwise its administrative functions would not have been taken from it as they were about forty years ago and committed to an elective county council. But one fault from which Quarter Sessions certainly was free was that of making it too easy for Government Departments at head-quarters to impose their own views as to what was required in the interests of the county. There is reason to believe that the elective county council has shown a tendency to be more supple, and it has in the result proved less of an obstacle to the growth of a bureaucratic spirit. The English counties, with one or two trifling exceptions, had for centuries equal representation by knights of the shire in the House of Commons, just as the Australian States now have equal representation in the Senate. But irrespective of that point of resemblance, the analogy between the English counties (some of which had once been independent kingdoms) and the Australian States is sufficiently close to justify the conclusion that there would be no objection in principle to the central authority in the Australian nation as the depositary of the power to dismiss and appoint the Executive Councillors of a State, provided always some way could be found of successfully performing the second of the two operations referred to above. That being so, the answer to be given to the question last propounded above turns upon the point whether it would be practicable to construct an administrative system whereunder the tendency of the Executive Council appointed by the central authority in the nation would be towards consulting the State's views and wishes in all cases where the will of the nation had not been expressed to a contrary effect. All the elements necessary for the construction of such an administrative system would be at hand or within easy reach, and it would only remain to make necessary adjustments in order to combine them skilfully together. One element would be the office of State Governor with its present associations. In virtue of being appointed by the King the State Governor would be out of privity with the central authority in the Australian nation and would be under no obligation to look to it for his instructions. Through his office the individuality of the State would find expression in a concrete form, and the mode of expression would be all the more effective because, as he would have come upon the scene for the very purpose of representing the British Monarchy, some of its prestige would normally enshroud and dignify his official doings. As the State Parliament would have ceased to exist, he would no longer be required to act as umpire between contending political parties and, that being so, he might be free to seize opportunities of usefulness not now open to him and even be warranted in undertaking active governmental functions other than as specially mentioned below. But whether that were so or not so, the moral significance and moral authority attaching to the office of State Governor would obviously do much to fortify the State's corporate self-consciousness and to make the State instant in asserting its claim that it should be governed in such a way as to respect its individuality to the utmost possible extent. As tending then to stiffen the State's power of resistance to centripetal influences, the State Governorship, as it is, would obviously be an important element in the combination now in view. Another element in the combination would be an Executive Council which, though not of the same creation as the present one, would tread in its footsteps so far as regarded the system of procedure to be followed and the method of collective action to be adhered to in carrying on the executive government of the State. Some readjustment of the relations between the State Governor and his Executive

Council would, however, be required to meet the altered circumstances. There would be no State Premier to keep the Executive Council in order and to save the principle of collective action inviolate; and presumably the State Governor would be the only person who could take over this function to advantage. It would thus devolve upon the State Governor to see to it that the members of the Executive Council performed good team-work together and did what they had to do with an ever-present sense of their collective responsibility for it. In discharging this function the Governor might perchance find that the exercise of his personal influence would not be sufficient to smooth over every difficulty that arose; and it would therefore be necessary to arm him with power to suspend —until the pleasure of the central authority in the nation could be known—any member of the Executive Council who by his conduct towards his colleagues or in any other way proved himself ill-qualified for his post. In virtue of this active function of the Governor's he would have it in charge that the business of the Executive Council should be transacted in the manner that was formally correct. But apart from that, the responsibility for the executive government of the State being up to the requisite standard of efficiency would rest with the Executive Council alone. That body being on the spot and in touch with the local conditions would be in a position of advantage for learning what course it ought to steer so as to satisfy the legitimate aspirations of the State without prejudicing any interest of the nation; and, all things considered, it would not be too much to expect that the Executive Council, if left free to follow its own independent judgement, would do its work fairly well and succeed on the average in rising to the level of its functions. But the power to define those functions and fix the limits within which the Executive Council must confine itself in the process of discharging them would be one which from the necessities of the case the National Parliament of Australia could on no account part with, but must retain in its own hands. That being so, the system of

Responsible Government would provide Departments of the Public Service at Canberra with facilities for getting the Parliament to adopt their own views as to how the executive government of the States ought to be conducted, even though those views were all in favour of tying the hands of the Executive Councils tightly and subjecting them to bureaucratic control. Some Public Department or other, for example, would only need to bring the Minister at its head round to its way of thinking and then the rest would become easy. The Minister's position would enable him to bring pressure to bear upon the Cabinet. The Cabinet by using its majority might transmit the pressure to the Parliament; and without the Parliament's having much choice in the matter, the margin of latitude allowed to the Executive Councils of the States might suffer attrition at one point after another until finally there would be little of it left. Hence in all probability the conditions which would then prevail would add materially to the risk that centripetal influences, as finding expression through Departments of the Public Service at headquarters, would prove too strong for centrifugal influences, as finding expression through the Executive Councils of the States, with the result that the executive government of each State would tend to become more and more centralized. To obviate that risk it would be necessary to introduce into the combination now in view a third element off-setting the transmitted pressure to be brought to bear upon the Parliament as above. The simplest and therefore probably the best way of supplying that third element would be to organize all the members representing a State in either House of the Parliament into a piece of institutional machinery which, as the word 'junta' and some of its synonyms are in bad odour, may perhaps be permissibly called for present purposes the 'moot' of State members. The function of the moot would be firstly to examine every case in which the Executive Council alleged that it had been embarrassed in the discharge of its duties by the existing arrangements for regulating the relations between itself and the central authority in the nation; secondly, to proceed to consider whether the case admitted of any remedy, and if so, what; and, thirdly, to place the substance of their conclusions upon record. The activities of the moot would no doubt need to be jealously circumscribed lest it should take too much upon itself. But even if they were kept within the narrowest limits, any one who took part in them would have his thoughts set running on the problem as to the best arrangements possible concerning the relations between the Executive Council of the State and the central authority in the nation, and he would be prompted by the spirit of his surroundings to regard that problem from the point of view of the State. Afterwards, when the Parliament had occasion to deal with the selfsame problem in some one or more of its many aspects, he would be urged by the spirit of his then surroundings to regard that problem from the point of view of the central authority in the nation. But the impressions formed by him whilst serving in the moot of State members, as to how the matters in question ought to be arranged, would in the ordinary course of things be fresh upon him; and he would find it difficult, if not impossible, to put them out of his mind when exercising himself over what Parliament ought to do in regard to those very matters. Under all the circumstances, then, it would be reasonable to expect that he would be fully conscious that the problem had two sides to it, and would realize the necessity of doing justice to both of them. As the bulk of his fellow members would also have done service in some moot or other, it would be natural for them to take up a similar attitude. The moot as a piece of institutional machinery would convert the Parliamentary representatives of a State more or less into carriers of centrifugal influences welling up from the State's corporate self-consciousness, and by that mode of transmission would secure for those influences adequate expression in the Parliament when concerning itself about the problem now specially in view. In the Parliamentary arena those influences would come into collision with the centripetal influences which would be native to the place and have their homes there. To prevent ever-renewed conflicts between these opposite sets of influences from bringing about confusion, Parliament would be forced to settle the whole question on the basis of some compromise, and all the probabilities of the case point to the conclusion that the principle of the compromise would be to allow the State Executive Councils to exercise their own independent judgements to the fullest extent compatible with the supremacy of the national interests. Duly to embody that principle in the charter to be granted for the purpose of regulating the executive government of the States would, it is almost superfluous to say, be a work of time. No charter for such a purpose could be wrought into a fitting shape except by resorting again and again to the method of trial and error; but with the aid of that method there seems no reason to doubt that it would be practicable to evolve out of the before-mentioned three elements an administrative system under which the views and wishes of the people of a State, at least so far as they were reconcilable with the interests of the nation, would have as much importance attached to them in connexion with the executive government of the States as if the form of polity were a federal one. Such an administrative system would be free, too, from one cause of weakness which must eventually cripple any administrative system under which the executive government of the State was committed to a Ministry responsible to an elective State Parliament. Neither type of administrative system would hold out much promise of fulfilling the whole purpose of its existence unless it was successful in keeping centripetal forces at bay; and the only source whence a perennial supply of countervailing forces could be obtained would be the corporate self-consciousness of the State. To that end it would first of all be necessary to make the most of the State's corporate self-consciousness; and that is a condition precedent which an administrative system resting upon an elective State Parliament would, to speak broadly, be unable to perform. In nearly every State, the fact that the Ministry was dependent upon an elective State Parliament would let the growing political preponderance of the metropolitan population into operation as the dominating factor in the situation, so that the Ministry would be left with little or no choice but to carry out that population's views and wishes at no matter what cost—financial or otherwise—to the rest of the State. Things must thereby be set in a train which could only lead to the State's becoming more and more divided against itself and to the dying-down of its corporate self-consciousness in consequence, until it became too feeble to fend off well-meant attempts on the part of the National Parliament to put matters on a better footing by restricting the freedom of action which the State Ministry had previously enjoyed. More likely than not, people living away from the State capital would even welcome chronic intervention by the Parliament of the nation as offering them the only chance of getting justice. A chapter in the history of France aptly illustrates how the weakening of the State's corporate self-consciousness would tend to affect the trend of events. Originally, that country was made up of provinces, each of which, time out of mind, had been a separate entity, and each of which had an abounding sense of its own individuality. At the French Revolution the provinces were wiped off the map, being split up into departments; and with their disappearance disappeared also their corporate self-consciousness. The supply of forces which otherwise might have been available to keep Paris and all that it stood for in check was thus cut off at the source, and in the result the governmental system of France became, and to this day has continued to be, highly centralized. As things now are in nearly every Australian State, an administrative system resting upon an elective State Parliament must fail to fortify the State's corporate self-consciousness as a nucleus of permanent resistance to any disposition on the part of the Parliament of the nation to interfere too much and too often with the conduct of the executive government of the State. Under the special circumstances that obtain in Australia, such an administrative system would merely open the door to centralization thinly or thickly disguised as the case might be. On the other hand, if we suppose that the administrative system were constructed out of the beforementioned three elements, the Executive Council of each and every State would be an emanation from something outside the State, that is to say, the central authority in the nation; and the Executive Councillors would be above the reach of the State's metropolitan population if it made any direct attempt to impose its will upon them. Under the conditions which would prevail, there would be nothing to prevent and, in the structure of the administrative system itself, much to favour a State's corporate self-consciousness having the mastery over the influences which would normally make for centralization. Matters standing so, there would be a reasonable prospect that the executive government of a State would be carried on in such a way as to consult the State's views and wishes so far as consistent with the national interests. Hence, so far as can be judged, an administrative system constructed on the lines proposed above, and therefore not resting upon a State Parliament, would be likely to prove a more reliable means of inducing the central authority in the nation to keep its hands off, than an administrative system constructed on conventional lines, and therefore resting upon a State Parliament. There would not be much difficulty in showing that the former administrative system would be superior to the latter in other respects also. But there is no call to go into them, because the conclusion just reached goes as far as is required to dispose of the second question propounded above. Under a unitary constitutional system there would be no need, as now appears, to have State Parliaments in order to ensure that the executive government of the States should be carried on in a spirit not changed for the worse from that which normally evidences itself under the federal constitutional system. There is a surer way open to attain the object in view without State Parliaments than with them; and that being so, the second question must be answered in the negative. Previously it was made clear that it would be better for the Australian nation, if and when reconstructed upon the unitary principle, not to have subordinate State Parliaments for legislative purposes. Now it has been made clear that the Australian nation as so reconstructed need not have such Parliaments for administrative purposes. Hence the contention that each State must have a Parliament of its own to serve as its organ of decision and action does not stand examination and may be put aside.

A fourth contention—one which appeals to the public mind more strongly in some parts of the Commonwealth than in others—is to the effect that the less populous States cannot possibly afford to do without the protection which the present federal form of polity gives them against the more populous States. No doubt there have been divers cases in which the less populous States have been hit hard by legislative or administrative actions taken by the Commonwealth, and the more populous States may in a sense be held answerable for what ultimately happened, for although powerful enough to have prevented them they stood by whilst the actions were being taken. But it would be a mistake to suppose that there was anything malicious in the conduct of the more populous States. They merely behaved in the manner which their own interests seemed to them to dictate; and if they did not concern themselves about the possible consequences to other States they were keeping well within their legal rights. The present federal form of polity, it is to be remembered, does not deal with the Australian States on the footing of their being bound to one another by any natural ties. It merely treats them as so many detached political communities chancing to have in common a limited number of interests likely to be best served if placed in charge of a single piece of institutional machinery representing the inhabitants of the several States. Starting from that basis, then, the present federal form of polity catalogues the matters of common interest in question, constructs the piece of institutional machinery that is to look after them, and fixes the number of representatives in it that the population of each State is to have. The electors of each State thus become invested with a certain amount of power enabling them to exercise a measure of control—more or less according to the circumstances—over all governmental operations within the Federal sphere of action, and nothing is expressed or implied which can in anywise be taken to bind the electors of any State to employ the power allotted to them in one way rather than another. Under such conditions the electors of the respective States naturally draw the inference—which on the face of it seems to be a valid one—that they have by contract a right to employ their share of power in the way that happens to suit them, no matter how other States may be prejudiced by their doing so. A contractual right to employ power in one way and a moral obligation to employ it in another way are two things which obviously cannot stand together. Hence, what the present federal form of polity does in this connexion is, in effect, to free the power, which it entitles the electors of every State to exert over the legislative and administrative activities of the Commonwealth, from any moral restraints against harming the interests of other States. In the Third Chapter, indeed, it was shown that the genius of a federal form of polity is towards treating the moral complexion of governmental acts of commission or omission as not being of cardinal importance. But that trait of a federal form of polity is not quite the same as the one which is in question here, although the distinction is for practical purposes a fine one. In the class of cases previously in view, moral considerations flit across men's minds as they can hardly fail to do, since every normal person is the owner of a conscience, but they are no match for the legal considerations which hustle them to the background. In the class of cases now in question, moral considerations do not obtrude themselves at all, since the electors of one State do not feel that they owe to any other State the duty of being tender of its interests, and legal considerations are the only ones that enter into their thoughts. In either class of cases alike legal considerations carry all before them. Under the present federal form of polity, then, the Federal piece of institutional machinery forms into legislative and administrative actions the views and wishes of masses of men who regard the relations between the States as being on a strictly legal basis, and who, to speak broadly, are at one in thinking that every State is entitled to serve its own interests—let the consequences to any other State be what they may. Hence in the Federal sphere of action no moral restraints upon potential governmental activities have recognized existence so as to protect the States as against each other. In the State sphere of action legal restraints are operative to the extent of ensuring that so far as appears on the surface every State shall have its own sphere of action to itself. But practical experience has time after time proved that legal restraints of such a limited scope are not sufficient of themselves to give adequate protection to all the interests of a State. What profit is it to Tasmania, for instance, to be protected, so far as its State sphere of action is concerned, against one form of molestation, whilst the Navigation Act passed by the Commonwealth Parliament keeps it constantly exposed to another form of molestation—that of being periodically cut off from maritime communication with the mainland? The legal restraints operating under the present federal form of polity in the State sphere of action would need to be supplemented by moral restraints operating in the Federal sphere of action before any State could be sure of having all its interests duly safeguarded; and moral restraints of the order required are alien to such a form of polity, because, as already shown, there is nothing for them to grow out of. Hence the trust which some States repose in the present federal form of polity as protecting them against other States is thoroughly misplaced. The less populous States obtain a certain amount of protection, for what it is worth, on the one side; but it is at the prohibitive cost of being left entirely unprotected on the other; and the predicament which they are in naturally raises the question whether they would not have a better chance of obtaining all the protection for which they crave if the existing form of polity were replaced by a unitary one. Under a unitary constitutional system, it is hardly necessary to premise, there would and could be no legal restraints binding upon the nation's supreme organ of decision and action, unless perchance imposed by the Constitution itself. But there could be moral restraints operating widely enough to bring all governmental activities within the ambit of their action and the then conditions would be favourable to the predominance of those moral restraints. The footing upon which the unitary constitutional system would deal with the States would be that of their being by their very nature bits of a homogeneous whole, and the social organism into which it would incorporate them would form a nation in the fullest acceptation of the word. What the constitutional system would constantly express and impress—and, with the aid of the integrating process set up by it, impress with an emphasis growing day by day—would in effect be that the Australian States were all members of one another; and the fact that they felt themselves so would of itself involve the existence of moral if not fiduciary relations between them. Each State would be conscious of a moral obligation not to attempt anything to the prejudice of the rest; and, as shown in the Third Chapter, the genius of the constitutional system as being unitary would be against the setting-at-naught of any such moral obligation. It would thus be rendered difficult for the apparatus of governmental mechanism to take any action which did not give to any State whatever was its due and supposing, for the sake of argument, that the more populous States were minded to take unfair advantage of the less populous the resultant clog upon some of its potential activities would operate in favour of the latter. But the possibility that such a thing would happen would from the nature of the case be all but remote. As the more populous and the less populous States would have consciously become members of one another it would be borne in upon them that their interests were inextricably interlocked; and the obviousness of that fact would in the ordinary course of things promote the growth as between them of a fellow-feeling having more or less of the effect ascribed to it by the familiar saying. Each State would thus tend to regard the interests of every other State as being part and parcel of its own; and the sense of self-interest, instead of prompting the more populous States to use their influence in the supreme counsels of the nation to exploit the other States, would prompt them to do the opposite and to support the latter's cause as being bound up with their own. Under the circumstances, then, there is little or no likelihood that the more populous States would be so ill-advised as to insist upon the taking of legislative or administrative actions to the detriment of the less populous States; and as things would work out, the moral restraints upon governmental activities would as a rule prove powerful enough to give the less populous States adequate protection at all points. The matter, however, is one which need not be laboured further, because Great Britain supplies a concrete example of how moral restraints operating under a unitary form of polity can serve as a shield of perfect protection to the less populous sections of a composite nation. England contains about five-sixths of the total population of Great Britain. But the Acts of Union with Wales and Scotland impliedly impose upon her moral obligations which forbid her to abuse her superiority of strength; and she is so conscious of their binding force that she is virtually incapable of intending anything to the injury of the other parts of Great Britain. Even if she were loath to act up to the spirit of the Acts of Union, she would nevertheless be deterred from pursuing a churlish policy by her profound sense of the interests of Wales and Scotland as identical with her own. How thoroughly she realizes the identity of interest is shown by her origination and observance of the constitutional maxim that a person elected to the House of Commons ought to sit there not as the representative of the constituency which returned him but as a representative of all Great Britain. This example shows that under a unitary form of polity the moral restraints upon governmental activities can develop all the energy necessary to make the less numerous sections of a nation sure of getting fair play. The example, it may be added, is all the more in point because the moral patrimony of the bulk of those in Australia is to a great extent cognate with that which is the heritage of the British people: if the disturbing influence of the present federal form of polity were removed, it would probably reassert itself in more or less similar ways. All things considered, then, it is not too much to expect that a unitary form of polity would produce in Australia results which, as viewed from this angle, would not compare badly with those which the like form of polity habitually produces in Great Britain. The reconstruction of the Australian nation upon the unitary principle would, it follows, give the less populous States a better chance than they now have have of obtaining all the protection that they need as against the more populous ones. It thus appears to be plainly to the interest of the less populous States to exchange the inadequate safeguards which they now have for the adequate safeguards which under a unitary form of polity they may reasonably expect to have. That being so, it is not open to doubt that the contention now under examination rests upon a misunderstanding of the whole position and may well be discarded by all who are wont to attach any weight thereto.

According to a theory which is commonly thought well-founded, the distinctive merit of federalism in the abstract is that it secures to each of the units included within the federation—States, Provinces, or Cantons as the case may be—that amongst other things its local interests and needs will be studied and satisfied and its local patriotism allowed to live on. It is not necessary to say here anything about this conventional view of the presumable results of a federal form of polity except that it does not agree with what actually happens in Australia. There, indeed, not the States enjoy the theoretical advantages of federalism, but the metropolitan populations within the States instead. Under Australia's present federal form of polity most things work together to help the growing political preponderance of the metropolitan populations to become the controlling force in the management-in-chief of State affairs, and in consequence those populations intercept and monopolize for their own benefit all the advantages (if such they really be) accruing from the federal form of polity. To speak broadly, there is hardly one Australian State in which it cannot be said with truth that federalism has so operated as to fill the inhabitants of the State capital with good things and to send the rest of the State almost empty away. As a leading factor in the situation, then, the mere mode in which the population of the Commonwealth is distributed is quite sufficient of itself to render a federal constitutional system so unsuitable to the circumstances prevailing in Australia that the States, as such, cannot but be prejudicially affected by the system; and the very purpose for the sake of which the existing form of policy is federal must incur defeat in practice. In so incoherent a state of affairs it becomes difficult to see what more can be said in defence of Australia's present federal form of polity than is set forth in those stock pleas in its favour which, when examined at full length, have one and all been found wanting. Taken as a whole, they fail to substantiate that the present federal form of polity can render the nation any one service which a unitary form of polity could not also render it as well if not better. Thence it follows that the present federal form of polity is left without anything to throw into the scale against the superior advantages which a unitary form of polity has to offer in two respects both intimately associated with the possibility of good government. Other things being equal, the mechanical efficiency of the apparatus of governmental mechanism must, as was shown in the Second Chapter, always be greater under a unitary form of polity than under a federal one. Other things being equal, the system of Responsible Government must always, as was shown in the Fourth Chapter, be less reliable under a federal form of polity as an instrument for the attainment of the national well-being and safety than it would be under a unitary one. After all, then, the issue whether the Australian nation ought to exercise its option to reconstruct itself upon the unitary principle is found to turn upon considerations which make a final decision upon the whole matter easy. The conclusion which leaps into view is that if the nation is to prove true to itself it must exercise the above option without undue delay. And it may proceed with all the more confidence to do so because English constitutional history as surveyed in the Fifth Chapter—and history, it is to be remembered, is philosophy teaching by examples—points to exactly the same conclusion.

APPENDIX

POWER TO ALTER THE CONSTITUTION

A Joint Legal Opinion

SECTION 128 of the Commonwealth Constitution is placed under the heading 'Alteration of the Constitution'—a heading which (in virtue of Clause IX of the covering clauses) is as much a part of the Constitution as Section 128 itself. In view of this heading, so worded, we think that the section must be read as a substantive grant of power to alter the constitution, and that the negative form of the section in no way detracts from the amplitude of that power.

As applied to such a subject-matter as a written constitution, the word 'alter', according to its natural meaning, is wide enough to include the substitution of one type of constitution for another, and does not suggest that the distinctive characteristics of the constitution in its original form must, as of necessity, be reproduced in its form as altered. Hence we are of opinion that the *prima facie* meaning of Section 128 is that it gives power to replace the present Constitution of the Australian Union by a Constitution which need no longer be strictly federal, and which even need not be federal at all. For greater caution we ought, however, to add that any alteration of the Commonwealth Constitution in either of the above senses could not in our opinion be effected under Section 128, unless upon the referendum a majority of the electors voting in each State approved of the alteration.

Both in respect of its subject-matter and of its generality Section 128 may well be compared with Article V of the United States Constitution, this being the article which prescribes the method by which the latter Constitution can be 'amended'—a term certainly not wider than the term 'alter'; and in National Prohibition Cases 253 United States Reports (p. 350) the Solicitor-General for the U.S. in the course of his argument (at p. 382) affirmed as follows: 'It has always been understood that there is no limitation upon the character of amendments which may be adopted, except such limitations as are imposed by Article V itself. With these specific limitations, whatever amendments or changes Congress may deem necessary to propose are incorporated in the Constitution if ratified in the manner provided by Article V.' The Supreme Court unanimously upheld the validity of the Eighteenth—the

Prohibition—Amendment, but gave no reasons for its conclusion on that point. This decision, though wholly consistent with our construction of Section 128, in default of any sufficient clue to the Court's reasons is not cited by us as an authority in our favour; but it is nevertheless interesting to note that Mr. Elihu Root (who impugned the validity of the amendment) had contended (p. 367) 'that the authority conferred in Article V to amend the Constitution carries no power to destroy its federal principle in a most fundamental aspect'.

By Clause IV of the covering clauses of the Commonwealth Constitution Act, the whole of the Constitution is placed on the same footing of authority as the covering clauses themselves. The clause enacts:

> 'The Commonwealth shall be established and the Constitution of the Commonwealth shall take effect on and after the day so appointed:'

'the day so appointed' meaning, as appears from the previous section, the day appointed in that behalf by Her then Majesty's Proclamation. Section 128 was an integral part of the Constitution as and when it so took effect. Hence from the very outset it was as much an attribute of the Commonwealth Constitution that it should be alterable to the full extent permitted by Section 128, as that in its original form it should be 'federal'. Accordingly we fail to understand how any form into which the Constitution may be altered in pursuance of Section 128 can be regarded as inconsistent with the covering clauses. It might be different if the theory that the characteristics of the first phase of the Union are to project themselves into a second phase had any foundation in the wording of the Commonwealth Constitution Act; but, so far as we can discover, it has none. The description, in the covering clauses, of the Commonwealth as being 'Federal' receives full effect by our construing it as referring to the Commonwealth in its first phase. What will be its true description in any subsequent phase will wholly depend upon the use that may have been made of Section 128. Hence we are of opinion that in the covering clauses there is nothing which requires Section 128 to be construed otherwise than according to the natural meaning of the words used in it.

The combined effect of Clause IV of the covering clauses and Section 128 being clear, it is not in our opinion permissible to refer to the Preamble in connexion with the question at issue, but, if such reference be nevertheless made, we can find nothing in it adverse to the conclusion already formulated. The Preamble (omitting those parts which are seemingly immaterial for present purposes) recites a preliminary agreement to 'unite in one indissoluble Federal Commonwealth . . . under the Constitution hereby established'. Section 128 formed an integral part of the Constitution thus in view. As from the time of the agreement it must have accordingly been contemplated that the Constitution should be alterable to the full extent of the power conferred by that section. The only other element in the Preamble remaining to be considered is the stipulation that the Federal Commonwealth should be 'indissoluble'. A union on the Canadian model or a union not federal at all can, in terms, be rendered as indissoluble as a union strictly federal in its form; and there is in such cases no incompatibility between the idea 'indissoluble' and the idea 'alterable'. Hence the Preamble—if it is to be taken into account—contains, as we said before, nothing adverse to the conclusion already formulated as to the scope of Section 128.

In two senses of the word, it is impossible to 'alter' the Preamble and covering clauses, and so far as regards those two senses we agree with what has been said by Sir Edward Mitchell upon the point. In regard to their past operation they are of course unalterable. What has been done under them cannot be undone; it has become history. Then again they—and the rest of the Commonwealth Constitution Act—as being a chapter in the Imperial statute-book cannot be erased from it by force of any action to be taken in Australia. Indeed if the form of the Union were to be altered under Section 128, it would still be necessary to go back to the Imperial statute in order to find the source of the legal authority for what had been, and was to be, done. But there is a third sense in which it can be predicated that the covering clauses (with or without the Preamble) can be 'altered'. By the operation of Section 128 they can for the future be rendered *pro tanto* spent or exhausted. There can, we think, be no question (even upon the narrowest view of Section 128) that it would authorize the textual emendation of the Commonwealth Constitution as, for example, by omitting the word 'State' wherever occurring, and inserting in its place the word 'Province'. Clause VI happens to contain a definition of 'State'; and after the emendation had been made, there would be nothing left to which this definition could apply. By the operation of Section 128 the definition would thus have become spent or exhausted. By parity of reasoning, the word 'Federal' wherever occurring in the covering clauses, might in the same manner be rendered inapplicable to a new order of things and therefore spent or exhausted. In this sense, then, the covering clauses (with or without the Preamble) are alterable. So far then as these clauses are concerned—to repeat what has been said before—no reason appears why the word 'alter' in Section 128 should not be construed according to the natural meaning. Accordingly we answer the questions submitted to us as follows:

(1) *Question:* Whether there is anything in the Preamble and/or covering clauses of the Commonwealth Constitution Act which compels Section 128 to be construed so as not to apply to such an alteration of the present Constitution as would be involved in an adoption of a federal constitution (say) on the Canadian model?

Answer: No.

(2) *Question:* Whether there is anything in the Preamble and/or covering clauses of the Commonwealth Constitution Act which compels Section 128 to be construed so as not to apply to any change in the nature of unification or any other fundamental change in the kind of union established by the said Act?

Answer: No.

(3) *Generally.* Any alteration of the Constitution in any of the senses indicated by the above questions would in our opinion—as already mentioned—need to be approved by all the States; and in any case where the approval of all the States had been obtained it is not open to doubt that the Imperial Parliament would pass, as a matter of course, any formal legislation necessary to prevent the validity of the alteration from being impeached, if and as soon as the Central Government of Australia so requested. One condition of the proper management of public affairs being that the legitimacy of the power exercising sovereign functions should not be capable of being called in question, sound policy, as seems to us, would require the Central Government to apply for such Imperial legislation before any litigation as to the validity of the alteration could be started. The mere pendency of litigation of such a kind could not fail to affect adversely the exercise of many important functions of government; and if the litigation were allowed to run its ordinary course, one or more years might elapse before finality was reached. Hence if

the Central Government had neglected to apply to the Imperial authorities soon enough to prevent litigation, the mere starting of the litigation would of itself be a signal that the application must not be further delayed.

Accordingly we may, for the sake of argument, permit ourselves to assume that Sir Edward Mitchell's opinion as to the scope of Section 128 is right. But even on that assumption it does not follow that his opinion is likely to have any practical effect. Legislation by the Imperial Parliament could validate any alteration of the Constitution going beyond the scope of Section 128 as construed by him; and in the circumstances it is highly improbable that such legislation would not be asked for, or if asked for would be withheld.

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